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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 128

THE UNITED STATES, APPELLANT,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O.
MILLS AND HOMER S. KING, TRUSTEES, AND CEN-
TRAL TRUST COMPANY OF NEW YORK, TRUSTEE.

No. 129

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O.
MILLS AND HOMER S. KING, TRUSTEES, AND CEN-
TRAL TRUST COMPANY OF NEW YORK, TRUSTEE,
APPELLANTS,

vs.

THE UNITED STATES.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

FILED SEPTEMBER 11, 1909.

(21,818 and 21,819.)

(21,818 and 21,819.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 592.

THE UNITED STATES, APPELLANT.

VS.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O.
MILLS AND HOMER S. KING, TRUSTEES, AND CEN-
TRAL TRUST COMPANY OF NEW YORK, TRUSTEE.

No. 593.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O.
MILLS AND HOMER S. KING, TRUSTEES, AND CEN-
TRAL TRUST COMPANY OF NEW YORK, TRUSTEE,
APPELLANTS,

VS.

THE UNITED STATES.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

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No. 1453

UNITED STATES CIRCUIT COURT of APPEALS
FOR THE NINTH CIRCUIT.

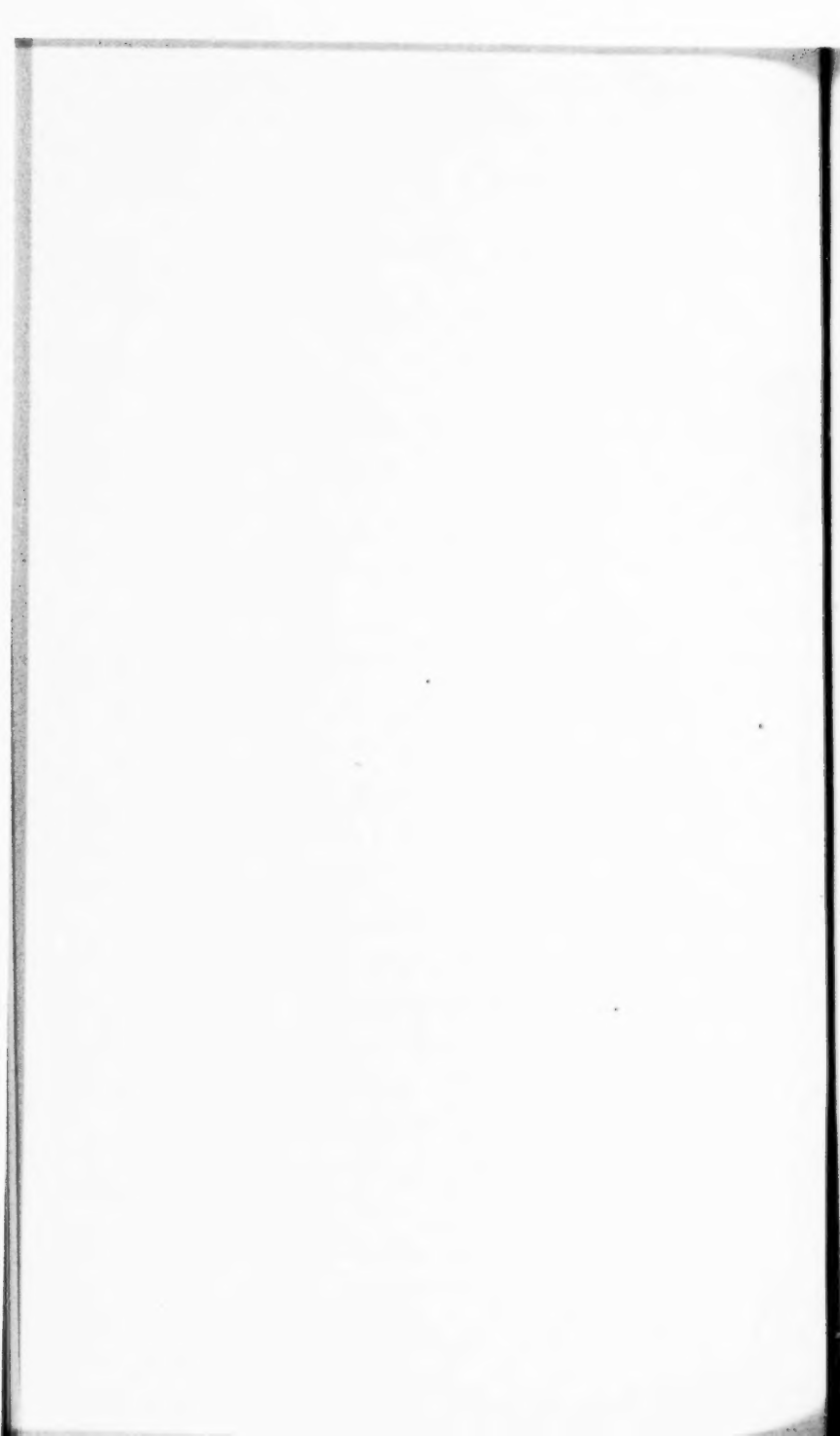
THE UNITED STATES OF AMERICA,
Appellant,

vs.

THE SOUTHERN PACIFIC RAILROAD
COMPANY, D. O. MILLS, and HOMER
S. KING, Trustees, and THE CENTRAL
TRUST COMPANY OF NEW YORK,
Appellees.

TRANSCRIPT OF RECORD.

Upon Appeal from the United States Circuit Court for
the Southern District of California,
Southern Division.



In the United States Circuit Court, Southern District of California, Ninth Circuit, Southern Division.

No. 1114.

UNITED STATES OF AMERICA,

Complainants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,

D. O. MILLS, and HOMER S. KING, Trustee, and CENTRAL TRUST COMPANY OF NEW YORK,

Defendants.

Citation on Appeal (Original).

To the Southern Pacific Railroad Company, D. O. Mills and Homer S. King, Trustees, and the Central Trust Company of New York, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, on the 16th day of April, A. D. 1907, pursuant to an order allowing an appeal entered in the clerk's office of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, from a final decree made and

entered on the 18th day of March, 1907, in that certain cause, being in equity, No. 1196, wherein the United States of America are complainants and appellants and you are defendants and appellees, to show cause, if any thereby, why the said decree rendered against said appellants as in the said order allowing the appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this eighteenth day of March, 1907, and of the Independence of the United States, the one hundred and thirty-second.

ERSKINE M. ROSS,

United States Circuit Judge for the Ninth Circuit.

Due service of the foregoing citation admitted on March 29th, 1907.

WM. SINGER, Jr.,

Attorney for Defendants.

[Endorsed]: No. 1114. In the United States Circuit Court, Ninth Circuit, Southern District of California. United States of America, Complainants, vs. Southern Pacific Railroad Co. et al., Defendants. Citation. Filed Apr. 4, 1907. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

In the United States Circuit Court, Southern Division, Southern District of California, Ninth Circuit.

THE UNITED STATES,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, and Others,

Defendants.

Bill.

To the Judges of the United States Circuit Court for the Southern District of California:

The United States, by the Attorney General thereof, brings this its bill of complaint against the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California, residing therein, D. O. Mills and Homer S. King, trustees residing in California, and The Central Trust Company of New York, trustee, a corporation organized and existing under and by virtue of the laws of the State of New York, residing in New York.

And thereupon your orator complains and shows unto the Court that by the act of Congress approved July 27, 1866, entitled "An act granting land to aid

in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company and granted to said company, to aid in the construction of said railroad, a large amount of lands in the State of California and other states and territories, and to the whole of which said act your orator refers. (See United States Statutes, Vol. 14, p. 292.)

Your orator further shows and alleges that said Atlantic and Pacific Railroad Company duly accepted said grant, and the terms and conditions of said act of July 27, 1866, within the time and manner therein required, and did designate upon plats or maps the whole of its line of route under said act, definitely locating the same from Springfield, Missouri, by way of the points and places named in said act, to the Pacific Ocean at San Buenaventura, in the State of California, and did file such plats or maps designating said line of route in the office of the commissioner of the general land office within the time and in the manner provided in said act, definitely establishing the whole thereof.

That said company filed maps of definite location designating that part of its said line in the State of California in said office of the commissioner of the general land office in the year 1872, and as said plats or maps were so filed in the interior depart-

ment they were each then approved by the Secretary of the Interior, and upon the filing of such maps or plats as aforesaid, the United States withdrew from market and reserved all the odd numbered sections of land in California within thirty (30) miles of said line of route, including the lands hereinafter described, and in pursuance of orders of the Secretary of the Interior and commissioner of the general land office, said withdrawal and reservation of said lands was made then of record in the general land office and United States district land offices in California by proper plats, diagrams and maps, to all of which your orator refers.

Your orator further shows that by section 18 of said act, of July 27, 1866, Congress authorized the Southern Pacific Railroad Company, a company incorporated under the laws of California, to connect with said Atlantic and Pacific Railroad, and to aid in its construction, made to said Southern Pacific Railroad Company a grant of lands upon the same terms, conditions and limitations as the grant to the said Atlantic and Pacific Railroad Company.

Your orator further alleges that by the joint resolution of Congress approved June 28, 1870 (16 Stat. 382) the Southern Pacific Railroad Company was authorized to construct its said line of railroad as near as may be upon the line of route indicated by the map filed by said company in the Interior De-

partment on January 3, 1867, and by said resolution there was granted to said company lands to the extent and amount granted to said company by said act of Congress of July 27, 1866, subject to all the conditions and restrictions provided for in the third section of said act.

Your orator further alleges and shows unto the Court, that in pursuance of said joint resolution and of said act approved July 27, 1866, said Southern Pacific Railroad Company filed in the office of the commissioner of the general land office in the Department of the Interior, on the 7th day of January, 1885, its map designating and definitely locating its line of route under said acts from the Colorado River on the eastern boundary of California, thence westerly to Mojave, which said map was thereafter finally approved by the Secretary of the Interior, as the map of definite location of said line of railroad of said company.

Your orator further shows unto the Court and alleges that by the act of Congress approved March 3, 1871 entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes" (See U. S. Stats. Vol. 16, pp. 573-9), Congress incorporated and created the Texas Pacific Railroad Company and granted to said company to aid in the construction of said railroad a large amount of land in the State of

California, and other states and territories, and to the whole of which said act your orator refers.

Your orator further shows to the Court that by section 23 of said act of Congress approved March 3, 1871, it was provided as follows: "That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California), to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions, as were granted to the said Southern Pacific Railroad Company of California by the act of July 27, 1866, provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company."

Your orator further alleges that said Southern Pacific Railroad Company in pursuance of the provisions of said section 23 of said act of March 3, 1871, did during the years from 1874 to 1878, inclusive, file in the office of the commissioner of the general land office in the department of the interior, in sections, its map designating and definitely locating its line of route from Mojave in the State of California,

thence via Los Angeles to the Colorado River, at or near the town of Fort Yuma, and which said map so filed in sections was definitely approved by the Secretary of the Interior as the map of definite location of said railroad.

Your orator alleges that said Atlantic and Pacific Railroad Company did not, within the time or manner required by said act of Congress of July 27, 1866, nor at all, construct or complete any railroad or telegraph line, in whole or in part, within the State of California, and that by the act of Congress of July 6, 1886 (24 Stats., p. 123), all lands and rights to lands granted to and conferred upon said Atlantic and Pacific Railroad Company, within both granted and indemnity limits, and situated within the State of California, were forfeited and resumed to the United States, and said lands were by said act restored to the public domain.

Your orator further alleges that said lands within the thirty mile limits of and appertaining to the said Atlantic and Pacific Railroad Company were not granted to defendant, Southern Pacific Railroad Company, by either or any of said acts of Congress, but on the contrary they were set apart and devoted by the United States to aid in the construction of said Atlantic and Pacific Railroad and were reserved from and excepted out of all granted made to said Southern Pacific Railroad Company and neither said

company nor any of the defendants herein have any right, title or interest to said lands or any thereof by virtue of any grant made to said Southern Pacific Railroad Company.

Your orator further alleges that the lands described in Exhibits "A" and "B" attached to this bill and made a part hereof were and are within the granted and place limits of the said Atlantic and Pacific Railroad located as aforesaid and appertained to the grant to said company, and are outside of the 20 mile but within the 30 mile limits of said grant of July 27, 1866, to said Southern Pacific Railroad Company as definitely located.

Your orator further alleges that regardless of the rights of your orator the Southern Pacific Railroad Company and the other defendants herein claimed and still claim some title and interest in the said lands described in Exhibits "A" and "B" to this bill, under some or all of said acts of Congress granting lands to said company, the precise nature and extent of which claims being unknown to your orator, but your orator alleges that all of such claims are unfounded.

Your orator further alleges that within the indemnity limits of each of said grants of 1871 and 1866 to said Southern Pacific Railroad Company, there still remain more than 100,000 acres of public

land in odd sections properly subject to selection, but unselected by said company.

Q. Your orator further alleges that on divers dates during the years 1902 and 1903, patents of United States were by error and mistake issued through the Interior Department to said Southern Pacific Railroad Company, for the lands described in Exhibit "A" attached to this bill, as lands inuring to said company under its grant of July 27, 1866, purporting to convey to said company the lands described therein.

Your orator further alleges that the lands described in said Exhibit "A" hereto attached, are situate within the indemnity limits of the grant of said Southern Pacific Railroad Company made by the act of Congress of July 27, 1866, and are also within the granted or place limits of the said grant of said Atlantic and Pacific Railroad Company and the said patents for said lands were issued by the officers of the United States inadvertently and by error and mistake, and that whatever moneys said Southern Pacific Railroad Company may have received from the sale of said lands, are held by said company in trust for your orator and are subject to a lien in favor of your orator to the extent of the value of said lands at the Government price of \$1.25 per acre.

Your orator further alleges, upon information and belief, that said railroad company has sold some of

said lands in Exhibit "A" or some interest therein to numerous persons, but your orator is not able to set forth the names of the persons to whom such lands have been sold or the extent of the interest conveyed or the amount paid by such purchasers respectively or the dates of such payments, said Southern Pacific Railroad Company having the exclusive knowledge and means of knowledge of such matters.

Your orator further alleges that defendant Southern Pacific Railroad Company claims and pretends that it has sold all of said patented lands or a major part thereof to purchasers in good faith whose titles to said lands have been confirmed to such purchasers by the act of Congress of March 2, 1896, hereinafter mentioned, and further claims and pretends that it has received in payment for such lands and on account of the sales thereof, more than \$1.25 per acre.

Your orator admits and alleges that said lands and all of them are of the value of \$1.25 per acre and over.

Your orator further alleges, that in former suits between the United States and the Southern Pacific Railroad Company, and the other defendants herein, commenced in the United States Circuit Court for the Southern District of California, and carried by appeal to the Supreme Court of the United States, it has been finally and conclusively adjudged

and determined by said courts and all of them as follows:

1. That the maps filed by the Atlantic and Pacific Railroad Company in 1872 were sufficient, as maps of definite location, to identify the lands granted to that company by the act of 1866.

2. That upon the acceptance of those maps by the Land Department, the rights of that company in the lands so granted, attached, by relation, as of the date of the act of 1866; and

3. That in view of the conditions attached to the grant, and of the reservations of power in Congress contained in the act of 1866, such lands became, upon the passage of the forfeiture act of 1886, the property of the United States, and by force of that act were restored to the public domain, without the Southern Pacific Railroad Company having acquired any interest therein that affected the power of the United States to forfeit and restore them to the public domain. (See 168 U. S. 166.)

And it was further, finally and conclusively adjudged by said court in said cause, that all of the lands and rights to lands granted to said Atlantic and Pacific Railroad Company by said act of Congress, were forfeited to the United States by said act approved July 6, 1886, for the use and benefit of the United States and not for the use or benefit of said Southern Pacific Company.

And it was further, finally and conclusively adjudged in said causes that said Southern Pacific Railroad Company could not and did not acquire under its said grant of March 3, 1871, either as granted lands or as indemnity lands, any lands or rights to lands falling within either the granted limits or indemnity limits of said grant to said Atlantic and Pacific Railroad Company. (See 168 U. S. 1, 66.)

And it was further finally and conclusively adjudged in said causes that said Southern Pacific Railroad Company, in pursuance of said act of July 27, 1866, and said joint resolution of June 28, 1870, did file in the office of the Commissioner of the General Land Office in the department of the interior, on the 7th day of January, 1885, its map designating and definitely locating its line of route under said acts, from a point near Needles on the Colorado River westerly to Mojave in California, and that the Atlantic and Pacific Railroad Company in the year 1872, did file in the office of the commissioner of the general land office in the department of the interior, its map designating and definitely locating its line of route under said act of July 27, 1866, from Springfield, Missouri, westerly to the Pacific Ocean at San Buenaventura, and that the United States was and is the owner by title absolute and in fee simple to an equal undivided moiety in all alternate sections of land designated by odd numbers within the place or

granted limits of the grant of said Atlantic and Pacific Railroad in California, so far as those limits conflict with like limits of said grant of July 27, 1866, to said Southern Pacific Railroad Company, excepting those lands the title to which was in former litigations between the United States and the Southern Pacific Railroad Company, adjudged to belong to the United States. (See 183 U. S. 519, 535.)

Your orator further alleges that it was in said causes further, finally and conclusively adjudged, that the map filed by said Southern Pacific Railroad Company in the general land office in the year 1871, between Tehachapi Pass and the Colorado River at or near Fort Yuma, in pursuance of said act of March 3, 1871, was and is a map of general route only, and not a map of definite location. (See 146 U. S. 570, 619.)

Your orator further alleges and shows that said several suits between United States and the defendants herein, were numbered on the docket of the United States Circuit Court for the Southern District of California, as follows: Numbers 68, 88, 177, 178, 184 and 600 and that the decisions and opinions upon appeal, by the Supreme Court of the United States are reported as follows: 146 United States Reports, pages 570 to 619. 168 United States Reports, pages 1 to 67; 183 United States Reports, pages 519 to 535, to which your orator refers.

Your orator further shows and alleges that in and by the final decree entered in said cause on the 19th day of July, 1894, entitled United States vs. Southern Pacific Railroad Company and others, No. 184 on the docket of the United States Circuit Court, for the Southern District of California, and reported in said 168 U. S. Reports at pages 1 to 66 as aforesaid, it was finally and conclusively determined and adjudged that all patents theretofore issued by the United States to the Southern Pacific Railroad Company for the following described lands be vacated and annulled, to wit:

All the sections of land designated by odd numbers in townships 3 and 4 north, ranges 5, 6 and 7 west; township 1 north, ranges 16, 17 and 18 west; township 6 and the south three-fourths of township 7 north, ranges 11, 12, 13, 14, 15, 16, 17, 18 and 19 west; all sections designated by odd numbers as shown by the public surveys, embraced within the townships from number 2 north to number 5 north, both numbers included, and ranges from number 8 west to number 18 west, both numbers included, San Bernardino Base and Meridian, California.

And it was further, finally and conclusively adjudged in and by said decree, that the United States was the owner by title in fee simple of all of said lands, and that the defendants to wit: the Southern Pacific Railroad Company and the trustees in its

mortgage bonds, be forever enjoined and restrained from chopping upon or carrying from the said lands any trees, timber or wood, and from claiming or asserting any right, title or interest in or to the said lands or any thereof.

Your orator further alleges that the lands and rights to lands granted to defendant Southen Pacific Railroad Company by section 18 of the Act of Congress of July 27, 1866, and by joint resolution of June 28, 1870, and by section 23 of the act of March 3, 1871, were all granted upon the same terms, conditions, restrictions as those granted to the Atlantic and Pacific Railroad Company by the said act of July 27, 1866, and that by section 20 of the said act of July 27, 1866, Congress expressly reserved the right and power to alter, amend or repeal that act.

Your orator further alleges that in pursuance of the right and power of Congress to alter, amend or repeal the said acts granting lands to defendant Southern Pacific Railroad Company and the said Atlantic and Pacific Railroad Company that the Act of Congress approved March 3, 1887 (24 Stat. 556) was passed, to which your orator refers.

Your orator further alleges that in further pursuance of said right and power to alter, amend and repeal said acts by Congress, the act approved March 2, 1896 (29 Stat. 42), was passed further providing

that as to lands erroneously patented to any railroad company that,

“No patent to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed.”

Your orator further alleges that by section 2 of said act of March 2, 1896, it was provided as follows:

“Sec. 2. That if any person claiming to be a bona fide purchaser of any lands erroneously patented or certified shall present his claim to the Secretary of the Interior prior to the institution of a suit to cancel a patent or certification, and if it shall appear that he is a bona fide purchaser, the Secretary of the Interior shall request that suit be brought in such case against the patentee or the corporation, company, person, or association of persons, for whose benefit the certification was made for the value of said land, which in no case shall be more than the minimum Government price thereof, and the title of such claimant shall stand confirmed. An adverse decision by the Secretary of the Interior on the bona fides of such claimant shall not be conclusive of his rights, and if such claimant, or one claiming to be a bona fide purchaser, but who has not submitted his claim to the Secretary of the Interior, is made a party to such suit and if found by the Court to be a bona fide purchaser, the Court shall decree a confirmation of the title and shall render

a decree in behalf of the United States against the patentee, corporation, company, person, or association of persons, for whose benefit the certification was made for the value of the land as hereinbefore provided."

And to the whole of said acts your orator refers.

Your orator further alleges that defendant Southern Pacific Railroad Company, duly accepted the terms and conditions of the said acts of Congress of March 3, 1887, and March 2, 1896, such legislation being greatly in the interest of said company, and by virtue of the provisions of said acts has in numerous suits between the United States and said company, interposed by plea, answer and otherwise, defenses to suits brought to vacate patents for lands erroneously issued to said company by alleging and showing that it had sold such lands to bona fide purchasers whose titles had been confirmed by said acts and in numerous decrees entered in such suits has secured orders and decrees confirming the title of such purchasers or dismissing the bill as to such lands, and that said company by reason thereof, ought to be and is estopped from denying its acceptance of said acts.

Your orator further alleges and shows that in direct violation of said decree of July 19, 1894, in said cause, No. 184 in said Circuit Court, the defendant railroad company from time to time during the

years from 1898 down to and including the year 1903, has claimed and selected many thousands of acres of said lands embraced in said decree, as indemnity inuring to said company under its grant of 1866, and has caused such selections from time to time to be placed upon the records of the general land office at Washington and of the United States land office at Los Angeles, and further that said company during said period and from time to time has selected other of said lands falling within the granted or place limits of the said Atlantic and Pacific grant and within the indemnity limits of said Southern Pacific grant as lands inuring to said company, as indemnity under its said grant of 1866 comprising all the lands described in Exhibit "B" to this bill, and part of which were embraced in the final decree of July 19, 1894, as aforesaid, and the remainder of which were within the granted limits of said Atlantic and Pacific Railroad Company and not at any time subject to selection as indemnity by said Southern Pacific Railroad Company.

Your orator further alleges and shows that said railroad company threatens to and unless enjoined will, continue from time to time to select other lands within said Atlantic and Pacific granted limits, as indemnity inuring to said company.

Your orator alleges and shows that said selections so made of record in said United States land offices,

have for many years and until canceled will, greatly hinder and embarrass your orator in disposing of the public lands under the laws of the United States in an orderly and legal manner and the said selections so made have prevented the settlement and entry of lands embraced thereby to the great and irreparable injury of your orator and of the citizens of the United States, entitled to enter and settle upon said lands, and that said selections were so made by said company for the purpose of hindering and embarrassing your orator in disposing of said lands, in an orderly and legal manner, and for the purpose of clouding the title to said lands in order to compel payments to said company by others desiring to legally and properly enter them under the laws of the United States.

Your orator further shows and alleges that in determining what lands described in said Exhibit "A" to the bill have been sold by said railroad company to bona fide purchasers and as to what payments have been made and by whom and as to what has been received by said company, upon such sales and as to what still remains unpaid and as to what amount is owing to your orator by said railroad company, involves great complexity and that an accounting is necessary between your orator and said railroad company, and a discovery as hereinafter prayed is required.

Wherefore, your orator having no plain, speedy or adequate remedy at law, prays that the Court will quiet and determine the title of your orator to all of the said lands described in Exhibits "A" and "B" hereto annexed, and will adjudge that your orator is the owner of said lands by title in fee simple and that the defendants have no right, title interest or estate herein or thereto, and that they be enjoined from claiming or asserting any right, interest, estate or title therein or thereto, especially any such claimed to exist under said act of Congress of July 27, 1866.

Your orator further prays that the Court will by a proper decree vacate and annul all patents issued by the United States to said Southern Pacific Railroad Company, for all of the said lands described in Exhibit "A" attached to this bill.

Your orator further prays that the Court will determine what of said lands described in said Exhibit "A" have been sold by said Southern Pacific Railroad Company, and what thereof are held by bona fide purchasers, and what sums of money have been received by defendant Southern Pacific Railroad Company for said lands, if any, and in case it be found that any of said lands have been sold by said railroad company to bona fide purchasers, that the Court will adjudge that said railroad company holds the moneys received for said lands in trust

for your orator to the extent of \$1.25 per acre, and that your orator have a lien for such sums upon all moneys or other property in the hands of said railroad company, received from the sale of such lands and that said railroad company be required to account to your orator therefor.

Your orator further prays that all selections and applications to select any of the lands described in Exhibit "B" to the bill by defendant railroad company be canceled and annulled, and that said defendants, their servants, agents, attorneys, employees and successors in interest, be forever enjoined and restrained from having or claiming to have any right, title, interest or estate in and to any of the said lands described in Exhibit "A" and Exhibit "B" to this bill, and from selecting or attempting to select any of said lands as indemnity under either or any of said grants of 1866, 1870, 1871, and from selecting or attempting to select any lands within the granted limits of the said grant to the said Atlantic and Pacific Railroad Company as indemnity inuring or claimed to have inured to said company as indemnity under either or any of said acts.

Your orator further prays that pendente lite and until a final decree of this Court, that a temporary injunction issue against said Southern Pacific Railroad Company, its servants, agents, attorneys, em-

ployees and successors in interest, enjoining said company from selecting, applying to select or attempting to select any of said lands within the granted limits of said Atlantic and Pacific Railroad grant, as indemnity under either or any of said acts, and from applying for or accepting any patent from the United States for such lands and that upon final hearing such injunction be made permanent.

Your orator prays for such other and further relief as to the Court may seem equitable, and for costs of this suit.

May it please your honors to grant unto your orator a writ of subpoena issuing out of and under the seal of this honorable court, directed to the defendants Southern Pacific Railroad Company, D. O. Mills and Homer S. King, as trustees, and the Central Trust Company of New York as trustee, commanding them and each of them at a certain day and under a certain penalty thereof to be inserted, personally to be and appear before your honors in this Honorable Court, and then and there to answer (but not under oath except as to the interrogatories hereto attached, answers under oath being hereby expressly waived except as to such interrogatories) all and singular the premises and to stand to, perform and abide such order and decree therein, as to your honors shall seem meet.

Your orator requires defendant Southern Pacific Railroad Company to show to the best of its knowledge, information and belief, and after an examination of its books and records, the following:

(1) Said company is required to state what sales or contracts to sell it has made of each of the tracts of land described in Exhibit "A" hereto, with the name of the purchaser of each tract and the name of each assignee or transferee of such tracts or of any contract given therefor by said company.

(2) The date of each such sale or contract to sell and the character of the instrument in writing, if any, given by said company to each such purchaser.

(3) The agreed purchase price of each such tract.

(4) The date and amount of each payment of principal and of interest upon each of such sales made by such several purchasers to said company.

And your orator will ever pray.

Dated March 31, 1904.

P. C. KNOX,

Attorney General.

L. H. VALENTINE,

United States Attorney.

JOSEPH H. CALL,

Special Ass't. U. S. Attorney.

Exhibit "A" to Bill.

Lands within the overlapping primary limits of the Atlantic and Pacific grant, and the indemnity limits of the grant of July 27, 1866, for the Southern Pacific Railroad, patented, to the Southern Pacific Railroad Company under its said main line grant of 1866.

| Parts of Sections. | Sec. | T. N. S. B. M. | | Remarks. |
|---------------------------------------|------|----------------|-------|---------------------------|
| | | T. N. | R. W. | |
| S. 1/2 of NW. 1/4 & S. 1/2 of SE. 1/4 | | | | List 94, Nov. 10, 1902, |
| & SW. 1/4..... | 3 | 7 | 13 | Patented June 30, 1903. |
| All of..... | 5 | 7 | 13 | Patented June 30, 1903. |
| N. 1/2.. | 9 | 7 | 13 | List 78, Aug. 28, 1893, |
| | | | | & List 94, Nov. 10, 1902, |
| | | | | patented June 30, 1903. |
| NW. 1/4..... | 11 | 7 | 13 | List 79, Aug. 28, 1893, |
| | | | | & List 94, Nov. 10, 1902, |
| | | | | patented June 30, 1903 |
| NE. 1/4 of NE. 1/4..... | 7 | 6 | 8 | Patented July 30, 1903. |

Exhibit "B" to Bill.

Lands within the overlapping indemnity limits of the grant of July 27, 1866, for the Southern Pacific Railroad and the primary limits of the Atlantic and Pacific grant, selected by the Southern Pacific R. R. Co., under its said main line grant of 1866 or included in pending applications to select under said grant.

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. |
|---------------------------------------|------|-------|-------|---|
| NE. 1/4 & N. 1/2 of SE. 1/4 & SE. 1/4 | 33 | 7 | 14 | Application to select List 87, Sep. 6, 1898. |
| All of..... | 35 | 7 | 14 | Applications to select, Lists 50 & 86, Presented Aug. 1894, & Sep. 6, 1898, respectively. |
| S. 1/2..... | 9 | 7 | 13 | Lists 78 & 92 Aug. 28, 1893, & Oct. 3, 1902. |
| S. 1/2 of NE. 1/4..... | 11 | 7 | 13 | List 97, April 23, 1903. |
| SE. 1/4..... | 11 | 7 | 13 | |
| All..... | 13 | 7 | 13 | List 92, Oct. 3, 1902. |

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. |
|---------------------------------------|------|-------|-------|--|
| All..... | 25 | 7 | 13 | Application to select. List 84, Sep. 6, 1898. |
| W. 1/2 of SW. 1/4 | 7 | 7 | 12 | List 92, Oct. 3, 1902. |
| S. 1/2..... | 17 | 7 | 12 | List 92, Oct. 3, 1902. |
| NW. 1/4..... | 17 | 7 | 12 | List 78, Aug. 28, 1893. |
| All..... | 19 | 7 | 12 | |
| S. 1/2 of SE. 1/4 & W. 1/2..... | 23 | 7 | 12 | |
| S. 1/2 of NE. 1/4 & NW. 1/4 & S. 1/2. | 25 | 7 | 12 | |
| All..... | 29 | 7 | 12 | |
| All..... | 33 | 7 | 12 | Applications to select |
| All..... | 35 | 7 | 12 | List 84, Sep. 6, 1898. |
| All..... | 1 | 6 | 12 | |
| All..... | 3 | 6 | 12 | |
| All..... | 5 | 6 | 12 | |

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. |
|----------------|------|-------|-------|--|
| All..... | 7 | 6 | 12 | Applications to select Lists 68 & 87, Oct. 29, 1894, & Sep. 6, 1898. |
| All..... | 9 | 6 | 12 | Application to select, List 84, Sep. 6, 1898. |
| All..... | 11 | 6 | 12 | |
| All..... | 13 | 6 | 12 | |
| All..... | 15 | 6 | 12 | |
| All..... | 17 | 6 | 12 | |
| W. 1/2..... | 19 | 6 | 12 | List 96, April 23, 1903. |
| E. 1/2..... | 19 | 6 | 12 | Applications to select, Lists 50 & 86. |
| All..... | 21 | 6 | 12 | Application to select, List 84. |
| All..... | 23 | 6 | 12 | |
| All..... | 27 | 6 | 12 | |

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. |
|---|------|-------|-------|---|
| N. 1/2 of SE. 1/4..... | 29 | 6 | 12 | List 96, April 23, 1903. |
| N. 1/2.. | 29 | 6 | 12 | Applications to select, Lists 50 & 86. |
| All..... | 33 | 6 | 12 | Applications to select, List 84, Sep. 6, 1898. |
| Lots 3, 4, 5, 7, 8, & S. 1/2..... | 5 | 5 | 12 | List 96, April 23, 1903. |
| All..... | 31 | 7 | 11 | Applications to select, List 84, Sep. 6, 1898. |
| SW. 1/4 of NW. 1/4 & NW. 1/4 of SW. 1/4 & 1/2 of SW. 1/4 & S. 1/2 of SE. 1/4..... | 33 | 7 | 11 | Applications to select, List 84, Sep. 6, 1898. |
| S. 1/2 of SW. 1/4 & S. 1/2 of SE. 1/4.. | 1 | 6 | 11 | List 96, April 23, 1903. |
| S. 1/2 of NE. 1/4 & NW. 1/4 & S. 1/2.. | 3 | 6 | 11 | Applications to select Lists 50 & 86. |
| N. 1/2.. | 5 | 6 | 11 | |

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. |
|----------------|------|-------|-------|---|
| S. 1/2.... | 5 | 6 | 11 | App. to select, Lists 51 & 87, Aug. 1894, & Sep. 6, 1898. |
| All.... | 7 | 6 | 11 | App. to select, Lists 67 & 87, Oct. 29, 1894, & Sep. 6, 1898. |
| All.... | 9 | 6 | 11 | App. to select, Lists 50 & 86. |
| All.... | 11 | 6 | 11 | App. to select, List 83, Sep. 6, 1898. |
| All.... | 13 | 6 | 11 | Application to select, List 87, Sep. 6, 1898. |
| All.... | 15 | 6 | 11 | Application to select, List 87, Sep. 6, 1898. |
| All.... | 17 | 6 | 11 | App. to select, Lists 68 & 87. |
| E. 1/2.... | 19 | 6 | 11 | |
| All.... | 21 | 6 | 11 | |

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. |
|---|------|-------|-------|--|
| All.... | 23 | 6 | 11 | App. to select, List 83, Sep. 6, 1898. |
| All.... | 25 | 6 | 11 | |
| All.... | 27 | 6 | 11 | |
| E. 1/2.... | 29 | 6 | 11 | App. to select, Lists 50 & 86. |
| E. 1/2.... | 33 | 6 | 11 | |
| All.... | 35 | 6 | 11 | App. to select, Lists 83, Sep. 6, 1898. |
| All.... | 1 | 5 | 11 | |
| N. 1/2 & SE. 1/4.... | 3 | 5 | 11 | |
| E. 1/2.... | 11 | 5 | 11 | App. to select, List 83, Sep. 6, 1898. |
| S. 1/2 of NE. 1/4 & NW. 1/4 & S. 1/2.. | 7 | 6 | 10 | App. to select, List 50. |
| S. 1/2 of NW. 1/4 & S. 1/2 of NE. 1/4 & S. 1/2.... | 9 | 6 | 10 | |

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. |
|---|------|-------|-------|---|
| S. 1/2 of SW. 1/4 & S. 1/2 of SE. 1/4.. | 11 | 6 | 10 | List 97, April 23, 1903. |
| All.... | 13 | 6 | 10 | |
| All.... | 15 | 6 | 10 | |
| All.... | 17 | 6 | 10 | |
| All.... | 19 | 6 | 10 | App. to select, List 50, Aug. 1894. |
| All.... | 21 | 6 | 10 | List 97, April 23, 1903. |
| All.... | 23 | 6 | 10 | |
| All.... | 25 | 6 | 10 | |
| All.... | 27 | 6 | 10 | App. to select, List 50, Aug., 1894. |
| All.... | 29 | 6 | 10 | |
| All.... | 31 | 6 | 10 | App. to select, List 83, Sep. 6, 1898. |
| All.... | 33 | 6 | 10 | |
| All.... | 35 | 6 | 10 | List 97, April 23, 1903. |
| All.... | 1 | 6 | 10 | List 96, April 23, 1903. |

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. |
|---------------------------------|------|-------|-------|--------------------------|
| All..... | 3 | 6 | 10 | |
| All..... | 5 | 6 | 10 | App. to select, List 83, |
| All..... | 7 | 6 | 10 | Sep. 6, 1898. |
| All..... | 9 | 6 | 10 | |
| All..... | 11 | 6 | 10 | List 96, April 23, 1903. |
| All..... | 13 | 6 | 10 | |
| All..... | 15 | 6 | 10 | App. to select, Lists 50 |
| | | | | and 86. |
| N. 1/2 & SE. 1/4..... | 17 | 6 | 10 | App. to select, List 83, |
| | | | | Sep. 6, 1898. |
| N. 1/2.. | 23 | 5 | 10 | |
| NE. 1/4..... | 25 | 5 | 10 | List 96, April 23, 1903. |
| S. 1/2 of SW. 1/4 & E. 1/2..... | 1 | 6 | 9 | List 97, April 23, 1903. |
| S. 1/2 of SE. 1/4..... | 3 | 6 | 9 | App. to select, List 50, |

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. Aug. 1894. |
|--|------|-------|-------|---------------------------------------|
| SE. 1/4 of NW. 1/4 & S. 1/2 of NE. 1/4 & SW. 1/4 of SW. 1/4 & E. 1/2 of SW. 1/4 & SE. 1/4..... | 7 | 6 | 9 | List 97, April 23, 1903. |
| S. 1/2 of NW. 1/4 & S. 1/2 of NE. 1/4 & S. 1/2..... | 9 | 6 | 9 | App. to select, List 50 Aug. 1894. |
| All..... | 11 | 6 | 9 | |
| All..... | 13 | 6 | 9 | |
| N. 1/2 & SE. 1/4 & E. 1/2 of SW. 1/4.. | 15 | 6 | 9 | |
| All..... | 17 | 6 | 9 | |
| All..... | 19 | 6 | 9 | |
| All..... | 21 | 6 | 9 | |
| All..... | 23 | 6 | 9 | List 97, April 23, 1903. |
| All..... | 25 | 6 | 9 | |
| All..... | 27 | 6 | 9 | |

| Parts of Secs. | Sec. | T.N. | R.W. | Remarks. |
|-----------------|------|------|------|---------------------------|
| All..... | 29 | 6 | 9 | |
| All..... | 31 | 6 | 9 | |
| All..... | 33 | 6 | 9 | |
| All..... | 35 | 6 | 9 | |
| All..... | 1 | 5 | 9 | |
| All..... | 3 | 5 | 9 | |
| All..... | 5 | 5 | 9 | |
| All..... | 7 | 5 | 9 | |
| All..... | 9 | 5 | 9 | Applications to select |
| All..... | 11 | 5 | 9 | Lists 51 & 86, Aug. 1894, |
| All..... | 13 | 5 | 9 | & Sep. 6, 1898. |
| All..... | 15 | 5 | 9 | |
| All..... | 17 | 5 | 9 | |
| All frac'l..... | 19 | 5 | 9 | |
| N. 1/2.. | 23 | 5 | 9 | List 96, April 23, 1903. |

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. |
|---|------|-------|-------|--------------------------|
| NW. 1/4 of NE. 1/4..... | 27 | 5 | 9 | |
| NW. 1/4 & SW. 1/4 of NE. 1/4..... | 29 | 5 | 9 | |
| S. 1/2 of NW. 1/4 & NE. 1/4 & S. 1/2. | 25 | 7 | 8 | |
| S. 1/2 of SW. 1/4 & S. 1/2 of SE. 1/4. | 27 | 7 | 8 | List 95, March 9, 1903. |
| S. 1/2 of NW. 1/4 & S. 1/2 of NE. 1/4 & S. 1/2..... | 33 | 7 | 8 | |
| All..... | 35 | 7 | 8 | |
| W. 1/2 & SE. 1/4 & NW. 1/4 of NE. 1/4 & S. 1/2 of NE. 1/4..... | 7 | 6 | 8 | |
| W. 1/2 of NW. 1/4 & W. 1/2 of SW. 1/4.... | 17 | 6 | 8 | |
| All frac'l..... | 19 | 6 | 8 | List 97, April 23, 1903. |
| W. 1/2 & W. 1/2 of NE. 1/4 & W. 1/2 of SE. 1/4..... | 29 | 6 | 8 | |
| All frac'l..... | 31 | 6 | 8 | |

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. |
|---|------|-------|-------|--------------------------|
| W. 1/2 of NW. 1/4 & W. 1/2 of SW. 1/4 | 5 | 5 | 8 | List 96, April 23, 1903. |
| All frac'l..... | 7 | 5 | 8 | |
| W. 1/2..... | 17 | 5 | 8 | |
| All frac'l..... | 19 | 5 | 8 | |
| N. 1/2 of SW. 1/4 & N. 1/2 of SE. 1/4 & N. 1/2.... | 21 | 5 | 8 | List 95, March 9, 1903. |
| N. 1/2 of NW. 1/4..... | 23 | 5 | 8 | |
| NE. 1/4 of NW. 1/4 & N. 1/2 of NE. 1/4 | 29 | 5 | 8 | List 96, April 23, 1903. |
| NW. 1/4 of NW. 1/4..... | 29 | 5 | 8 | |
| S. 1/2 of SW. 1/4 & SW. 1/4 of SE. 1/4..... | 13 | 7 | 7 | List 97, April 23, 1903. |
| E. 1/2 of NE. 1/4 & E. 1/2 of SE. 1/4. | 15 | 7 | 7 | |
| W. 1/2 of SE. 1/4 & SW. 1/4..... | 15 | 7 | 7 | |
| S. 1/2 of SE. 1/4..... | 17 | 7 | 7 | |

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. |
|--|------|-------|-------|--------------------------|
| S. 1/2 of SW. 1/4 & S. 1/2 of NE. 1/4 & SE. 1/4.... | 19 | 7 | 7 | List 95, April 23, 1903. |
| All..... | 21 | 7 | 7 | |
| All..... | 23 | 7 | 7 | |
| All..... | 25 | 7 | 7 | List 97, April 23, 1903. |
| All..... | 27 | 7 | 7 | |
| All..... | 29 | 7 | 7 | List 95, April 23, 1903. |
| All..... | 31 | 7 | 7 | |
| All..... | 33 | 7 | 7 | |
| W. 1/2 of NE. 1/4 & W. 1/2 of SE. 1/4 & W. 1/2.... | 35 | 7 | 7 | |
| E. 1/2 of NE. 1/4 & E. 1/2 of SE. 1/4. | 35 | 7 | 7 | List 97, April 23, 1903. |
| All frac'l..... | 1 | 6 | 7 | |
| E. 1/2..... | 13 | 6 | 7 | List 29, Oct. 7, 1887. |
| E. 1/2 of NE. 1/4 & E. 1/2 of SE. 1/4. | 25 | 6 | 7 | List 97, April 23, 1903. |

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. |
|--|------|-------|-------|------------------------|
| E. 1/2 of NW. 1/4 & E. 1/2 of SW. 1/4 & E. 1/2..... | 1 | 5 | 7 | |
| S. 1/2 of NW. 1/4 & S. 1/2..... | 19 | 7 | 6 | |
| S. 1/2 of SW. 1/4 & S. 1/2 of SE. 1/4.. | 27 | 7 | 6 | |
| All..... | 29 | 7 | 6 | List 99, July 2, 1903. |
| All frac'l..... | 31 | 7 | 6 | |
| All..... | 33 | 7 | 6 | |
| All..... | 35 | 7 | 6 | |
| All frac'l..... | 1 | 6 | 6 | List 29, Oct. 7, 1887. |
| All frac'l..... | 3 | 6 | 6 | |
| All frac'l..... | 5 | 6 | 6 | |
| All frac'l..... | 7 | 6 | 6 | List 98, May 4, 1903. |
| All frac'l..... | 9 | 6 | 6 | |
| All frac'l..... | 11 | 6 | 6 | List 29, Oct. 7, 1887. |
| NE. 1/4 & W. 1/2..... | 13 | 6 | 6 | |

| Parts of Secs. | Sec. | T.N. | R. W. | Remarks. |
|----------------|------|------|-------|------------------------|
| All.... | 15 | 6 | 6 | List 99, July 2, 1903. |
| All.... | 17 | 6 | 6 | |
| All frac'l.... | 19 | 6 | 6 | |
| All.... | 21 | 6 | 6 | |
| All.... | 23 | 6 | 6 | |
| All.... | 25 | 6 | 6 | |
| All.... | 27 | 6 | 6 | |
| All.... | 29 | 6 | 6 | |
| All.... | 31 | 6 | 6 | |
| All.... | 33 | 6 | 6 | |
| All.... | 35 | 6 | 6 | |
| All frac'l.... | 1 | 5 | 6 | |
| All frac'l.... | 3 | 5 | 6 | |
| All frac'l.... | 5 | 5 | 6 | |
| All frac'l.... | 7 | 5 | 6 | |

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. |
|---------------------------------------|------|-------|-------|------------------------|
| All..... | 9 | 5 | 6 | |
| All..... | 11 | 5 | 6 | List 98, May 4, 1903. |
| All frac'l..... | 13 | 5 | 6 | |
| All frac'l..... | 15 | 5 | 6 | |
| N. 1/2.. | 17 | 5 | 6 | |
| N. 1/2 of NW. 1/4 & N. 1/2 of NE. 1/4 | 23 | 5 | 6 | |
| S. 1/2.... | 31 | 7 | 5 | |
| S. 1/2 of SW. 1/4 & S. 1/2 of SE. 1/4 | 33 | 7 | 5 | List 99, July 2, 1903. |
| S. 1/2 of SW. 1/4 & S. 1/2 of SE. 1/4 | 35 | 7 | 5 | |
| W. 1/2..... | 1 | 6 | 5 | List 29, Oct. 7, 1887. |
| SE. 1/4 & N. 1/2..... | 3 | 6 | 5 | |
| All frac'l..... | 5 | 6 | 5 | |
| All frac'l..... | 7 | 6 | 5 | |
| SE. 1/4 & W. 1/2.... | 9 | 6 | 5 | List 99, July 2, 1903. |
| All..... | 11 | 6 | 5 | |

| Parts of Secs. | Sec. | T.N. | R.W. | |
|---------------------------------|------|------|------|------------------------|
| W. 1/2 of SE. 1/4 & W. 1/2..... | 13 | 6 | 5 | |
| NW. 1/4 & E. 1/2..... | 15 | 6 | 5 | |
| All..... | 17 | 6 | 5 | List 29, Oct. 7, 1887. |
| E. 1/2 & SW. 1/4..... | 19 | 6 | 5 | |
| All..... | 21 | 6 | 5 | |
| All..... | 23 | 6 | 5 | List 33, July 2, 1903. |
| All..... | 25 | 6 | 5 | List 29, Oct. 7, 1887. |
| N. 1/2 & SE. 1/4..... | 27 | 6 | 5 | List 99, July 2, 1903. |
| All..... | 29 | 6 | 5 | List 99, July 2, 1903. |
| SE. 1/4 & W. 1/2..... | 31 | 6 | 5 | |
| SE. 1/4 & W. 1/2..... | 33 | 6 | 5 | |
| All..... | 35 | 6 | 5 | |
| All frac'l..... | 1 | 6 | 5 | |
| All frac'l..... | 3 | 6 | 5 | |
| All frac'l..... | 5 | 6 | 5 | |

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. |
|---|------|-------|-------|------------------------|
| All frac'l..... | 7 | 6 | 5 | List 99, July 2, 1903. |
| All frac'l..... | 9 | 6 | 5 | |
| All..... | 11 | 6 | 5 | |
| All..... | 13 | 6 | 5 | |
| E. 1/2..... | 15 | 6 | 5 | |
| All..... | 17 | 6 | 5 | |
| N. 1/2.. | 19 | 6 | 5 | |
| N. 1/2.. | 21 | 5 | 5 | |
| N. 1/2.. | 23 | 5 | 5 | |
| E. 1/2 of NW. 1/4 & E. 1/2 of SW. 1/4 & E. 1/2..... | 7 | 6 | 4 | |
| W. 1/2..... | 17 | 6 | 4 | |
| SE. 1/4 of NE. 1/4 & N. 1/2 of SE. 1/4 & SW. 1/4 of SE. 1/4..... | 19 | 6 | 4 | |
| All..... | 25 | 6 | 4 | |

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. |
|--|------|-------|-------|----------|
| N. 1/2 & N. 1/2 of SE. 1/4 & N. 1/2 of SW. 1/4..... | 29 | 6 | 4 | |
| All..... | 31 | 6 | 4 | |
| All..... | 33 | 6 | 4 | |
| All..... | 35 | 6 | 4 | |
| All frac'l..... | 1 | 5 | 4 | |
| All frac'l..... | 3 | 5 | 4 | |
| All frac'l..... | 5 | 5 | 4 | |
| All frac'l..... | 7 | 5 | 4 | |
| All frac'l..... | 9 | 5 | 4 | |
| All..... | 11 | 5 | 4 | |
| All..... | 13 | 5 | 4 | |
| All..... | 15 | 5 | 4 | |
| All..... | 17 | 5 | 4 | |

List 29, Oct. 7, 1887.

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. |
|---|------|-------|-------|------------------------|
| N. 1/2.. .. . | 19 | 5 | 4 | |
| N. 1/2 & N. 1/2 of SE. 1/4 & N. 1/2 of SW. 1/4.. .. . | 23 | 5 | 4 | |
| All.... .. . | 9 | 6 | 3 | List 30, Oct. 7, 1887. |
| All.... .. . | 27 | 6 | 3 | |
| All.... .. . | 33 | 6 | 3 | |
| All.... .. . | 35 | 6 | 3 | |
| All frac'l.... .. . | 1 | 5 | 3 | |
| All frac'l.... .. . | 3 | 5 | 3 | List 99, July 2, 1903. |
| Frac'l E. 1/2.. .. . | 5 | 5 | 3 | |
| Frac'l S. 1/2.... .. . | 7 | 5 | 3 | |
| N. 1/2.. .. . | 9 | 5 | 3 | |
| All.... .. . | 11 | 5 | 3 | |
| All.... .. . | 13 | 5 | 3 | |
| All.... .. . | 15 | 5 | 3 | |

| Parts of Secs. | Sec. | T. N. | R. W. | Remarks. |
|---|------|-------|-------|----------|
| All..... | 17 | 5 | 3 | |
| E. 1/2 & NW. 1/4 & E. 1/2 of SW. 1/4 & NW. 1/4 of SW. 1/4..... | 19 | 5 | 3 | |
| All..... | 21 | 5 | 3 | |
| All..... | 23 | 5 | 3 | |
| N. 1/2 & E. 1/2 of SE. 1/4 & N. 1/2 of SW. 1/4 & SE. 1/4 of SW. 1/4..... | 25 | 5 | 3 | |
| N. 1/2 & N. 1/2 of SW. 1/4 & N. 1/2 of SE. 1/4..... | 27 | 5 | 3 | |
| N. 1/2 of NE. 1/4 & SE. 1/4 of NE. 1/4 & N. 1/2 of NW. 1/4..... | 29 | 5 | 3 | |
| NE. 1/4 & S. 1/2..... | 5 | 5 | 2 | |
| All frac'l..... | 7 | 5 | 2 | |
| All frac'l..... | 19 | 5 | 2 | |
| S. 1/2 of SW. 1/4 & S. 1/2 of SE. 1/4 | 25 | 6 | 1 | |
| S. 1/2.... | 27 | 6 | 1 | |
| All..... | 35 | 6 | 1 | |
| All frac'l.... | 1 | 5 | 1 | |

List 99, July 2, 1903.

[Endorsed]: No. 1114. In the U. S. Circuit Court, Southern Dist. of Cal. So. Div. United States, vs. So. Pac. R. R. Co., et al. Bill filed April 11, 1904. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Joseph H. Call, Special Ass't U. S. Attorney.

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Circuit,
Southern District of California, Southern Division.*

IN EQUITY.

Subpoena.

The President of the United States of America,
Greeting, to the Southern Pacific Railroad
Company, a corporation, D. O. Mills and Homer
S. King, trustees:

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Los Angeles on the 6th day of June, A. D. 1904, to answer a bill of complaint exhibited against you in said Court by The United States, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, The Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 12th

day of April, in the year of our Lord one thousand nine hundred and four and of our Independence the one hundred and twenty-eighth.

[Seal]

WM. M. VAN DYKE,

Clerk.

By Chas. N. Williams,

Deputy Clerk.

Memorandum Pursuant to Rule 12, Supreme Court
U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of June next, at the clerk's office of said court pursuant to said bill; otherwise the said bill will be taken pro confesso.

WM. M. VAN DYKE,

Clerk.

By Chas. N. Williams,

Deputy Clerk.

Clerk's Office: Los Angeles, California.

[Endorsed]:

United States Marshal's Office,
Northern District of California.

I hereby certify, that I received the within writ on the 13 day of April, 1904, and personally served the same on the 21 day of April, 1904, on D. O. Mills and Homer S. King, Trustees—by delivering to and leaving with said D. O. Mills and Homer S. King, Trustees, two of said defendants named therein, per-

sonally, at the city and county of San Francisco in said district, a certified copy thereof, and also personally served the same on the 23d day of April, 1904, on The Southern Pacific Railroad Co. by delivering to and leaving with Jos. L. Willcutt, Secty. of said Railroad Co., one of said defendants, at the city and county of San Francisco in said district, a certified copy thereof.

San Francisco, April 23d, 1904.

JOHN H. SHINE,

U. S. Marshal.

U. S. Marshal's costs, \$6.

No. 1114. U. S. Circuit Court, Ninth Circuit, Southern District of California, Southern Division. In Equity. The United States vs. The Southern Pacific Railroad Company et al. Subpoena. Filed Apr. 25, 1904. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

At a stated term, to wit, the January Term, A D. 1904, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, held at the courtroom, in the city of Los Angeles, on Thursday, the fourteenth day of April in the year of our Lord one thousand nine hundred and four. Present: The Honorable OLIN WELLBORN. District Judge.

No. 1114.

THE UNITED STATES OF AMERICA,
Complainants,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY (a Corporation), D. O. MILLS and HOMER S. KING, as Trustees, and THE CENTRAL TRUST COMPANY OF NEW YORK, a Corporation, as Trustees,
Defendants.

Order Directing Certain Absent Defendants to Appear and to Plead, etc. (Certified Copy.)

At a stated term of the Circuit Court of the United States for the Southern District of California, Southern Division, begun and holden at the city of Los Angeles, State of California, on the 11th day

of January, A. D. 1904, the Honorable Olin Wellborn, United States District Judge for the Southern District of California, presiding, on the 14th day of April, A. D. 1904, in open court, Joseph H. Call, Esq., Special Assistant United States Attorney, having moved the Court for an order to require certain defendants in the above-entitled suit to appear, plead and answer within a time to be specified, and hereinafter mentioned, and it appearing to the Court that said defendants in the above-entitled suit, to wit, D. O. Mills and Homer S. King, as trustees, and the Central Trust Company of New York, a corporation trustee, are not inhabitants of and neither of them is an inhabitant of, nor can they or either of them be found within this judicial district, the Southern District of California, nor within the State of California, and that they have not and neither of them has voluntarily appeared in this suit,

And it further appearing to the Court that this suit is one to enforce a claim to certain real estate described in the bill of complaint and within this judicial district;

And it further appearing that there is no person or persons in possession or charge of said real estate;

Now, therefore, it is ordered and adjudged that said defendants, D. O. Mills and Homer S. King, as trustees, and the Central Trust Company of New York, trustee, be and they hereby are directed to ap-

pear in this court in the city of Los Angeles, State of California, on or before the first Monday of June, A. D. 1904, and to plead, answer or demur to the bill of complaint in said suit on or before the first Monday in July, A. D. 1904.

And it is further ordered and adjudged that a copy of this order, duly certified by the clerk of this court, may be served upon each of the said defendants last named wherever they may be found.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said Court on the 14th day of April, A. D. 1904, in the cause entitled *The United States of America, Complainants, vs. The Southern Pacific Railroad Company, a Corporation, et al., Defendants, No. 1114 Southern Division*, and remaining of record therein.

Attest my hand and the seal of said Circuit Court this 19th day of April, A. D. 1904.

[Seal]

WM. M. VAN DYKE,

Clerk.

[Endorsed]: I hereby certify that on the 25th day of April, 1904, at the city of New York, in my district, I served the within certified copy of order upon the within-named defendant, Central Trust Company of New York, as trustee, by exhibiting to

George Bertine, as secretary of said company, the within certified copy, and at the same time leaving with him a certified copy thereof. I hereby further certify that on the 6th day of May, 1904, at the city of New York, in my district, I personally served the within certified copy of order upon the within named defendant, D. O. Mills, as trustee, by exhibiting to him the within certified copy, and at the same time leaving with him a certified copy thereof. The within named Homer S. King not found in my district.

Dated May 6, 1904.

WM. HENKEL,
United States Marshal,
Southern District of New York.

J. B. B.

(Certified Copy.) No. 1114. U. S. Circuit Court, Ninth Circuit, Southern District of California, Southern Division. The United States of America vs. The Southern Pacific Railroad Company, a Corporation, et al. Certified Copy Order Directing Absent Defendants to Appear and Plead. Filed May 11, 1904. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

Case No. 1114.

*United States Circuit Court, Ninth Circuit, Southern
District of California, Southern Division.*

UNITED STATES,

Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,
and Others,

Defendants.

**Joint and Several Answer of Defendants to Bill of
Complaint.**

The joint and several answer of the defendants, Southern Pacific Railroad Company, D. O. Mills and Homer S. King as trustees, and the Central Trust Company of New York, to plaintiff's bill of complaint in the above-entitled case.

The above-named defendants, now and at all times giving unto themselves and each of them all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereto or to so much thereof as they are advised it is material or necessary to make answer to, jointly and sev-

erally answering the said bill of complaint admit, deny and allege as follows:

1st. Admit that by the Act of Congress referred to in the bill of complaint, approved July 27th, 1866, Congress incorporated the Atlantic and Pacific Railroad Company, and made a grant unto that company of a large amount of lands in the State of California.

2d. Allege that they have no information or knowledge about such matters, and on that ground deny that the Atlantic and Pacific Railroad Company duly accepted the said grant, or duly accepted the terms or conditions of the said Act of July 27th, 1866, within the time and manner required, or at all; and on the same ground deny that the Atlantic and Pacific Railroad Company did designate on plats or maps the whole of its, or the whole of any, line of route under said Act, definitely locating the same from Springfield, Missouri, by way of the points and places named in the said Act to the Pacific Ocean at San Buena Ventura or elsewhere; and on the same ground deny that the Atlantic and Pacific Railroad Company did file such, or any, plats or maps designating said, or any, line of route (except as hereinafter expressly admitted) in the office of the Commissioner of the General Land Office, within the time or in the manner provided in said Act, definitely

or otherwise establishing the whole or any part thereof.

3d. Admit that in the year 1872, the Atlantic and Pacific Railroad Company filed in the General Land Office several maps, which together designated a line of railroad route in the State of California; admit that those maps were, during the year 1872, approved by the Secretary of Interior as maps of definite location; admit that thereafter (but not thereupon, as is said in the bill of complaint), the proper officers of the United States withdrew from market all odd sections of public land in the State of California lying within twenty miles of the said line of route, and including the lands described in "Exhibit A" and "Exhibit B" to the bill of complaint; deny that such withdrawal included any odd sections of land distant more than twenty miles from said line of route.

4th. Admit that by section 18 of the said Act of July 27th 1866, Congress authorized the Southern Pacific Railroad Company, a company incorporated under the laws of the State of California, to connect with the Atlantic and Pacific Railroad at such point near the boundary line of the State of California as the Southern Pacific Railroad Company deemed most suitable for a railroad to San Francisco; and admit that, to aid in construction of the railroad which it was so authorized to construct, the

said section 18 made unto the said Southern Pacific Railroad Company a grant of lands similar to, and subject to the same conditions and limitations as the grant made by the same Act to the Atlantic and Pacific Railroad Company.

5th. Deny that it is wholly true, in manner and form as set forth in the bill of complaint, that by the Joint Resolution of Congress, approved June 28th, 1870, the said Southern Pacific Railroad Company was authorized to construct its said line of railroad as near as may be upon the line of route indicated by the map filed by the said Company in the Interior Department on January 3d, 1867, and by the said Joint Resolution there was granted to the said Company, lands to the extent and amount granted to it by the said Act of July 27th, 1866; and allege that the true facts and particulars as to such matters and things are as follows: On January 3d, 1867, the said Southern Pacific Railroad Company filed in the Interior Department a map designating a line of route for the railroad it was authorized by the said Act of July 27th, 1866, to construct. A portion of the line shown on that map between Needles and Mojave was along the same general course of, and contiguous to, a line of route thereafter designated by the Atlantic and Pacific Railroad Company. In that way a question arose in the Department of Interior as to whether the South-

ern Pacific Railroad Company was authorized by the Act of July 27th, 1866, to construct a railroad along the said portion of line of route designated on the map of January 3d, 1867; and so it was that Congress, by the Joint Resolution of June 28th, 1870, accepted and approved the line designated by the said map of January 3d, 1867, as the line contemplated for the said Southern Pacific Railroad Company by the Act of July 27th, 1866, and declared that the said Southern Pacific Railroad Company might construct its railroad as near as may be along that line, and in aid thereof receive the land grant provided by the said Act of July 27th, 1866.

6th. Admit that said Southern Pacific Railroad Company filed in the Department of Interior maps designating and definitely locating its line of railroad from Needles to Mojave; and admit that said maps were finally approved by the Secretary of Interior as such maps. But defendants allege that said maps were so filed in five several sections, the earliest thereof on January 31st, 1878, the latest thereof on December 31st, 1884, and that the said three other maps were so filed on dates intermediate January 31st, 1878, and December 31st, 1884; allege that each and all of said maps were finally approved and accepted by the Secretary of Interior on and before January 7th, 1885; and defendants say it is not true, as alleged in the bill of complaint, that all of said

maps were filed in the office of the Commissioner of the General Land Office on January 7th, 1885, nor is it true as alleged in the bill of complaint that the Secretary of Interior did not finally approve those maps until after January 7th, 1885.

7th. Admit and allege that section 23 of the Act of Congress approved on March 3d, 1871, referred to and quoted from on pages three and four of the bill of complaint, provided as follows: "That, for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California), to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California, by the act of July twenty-seven, eighteen hundred and sixty-six: Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

8th. Admit that the said Southern Pacific Railroad Company filed in the Department of Interior, and the Secreary of Interior finally approved, maps

in five several sections definitely locating the entire railroad it was authorized by section 23 of the said Act of March 3d, 1871, to construct; and allege that the earliest of said maps was so finally approved on May 11th, 1874, that the latest thereof was finally approved on January 31st, 1878, and that the said three other maps were so finally approved on dates intermediate May 11th, 1874, and January 31st, 1878.

9th. Admit that the Atlantic and Pacific Railroad Company did not construct any railroad in the State of California; and admit that by Act of Congress approved July 6th, 1886, referred to in the bill of complaint, all lands in California granted to the Atlantic and Pacific Railroad Company, within both granted and indemnity limits thereof, were forfeited and resumed to the United States, and restored to the public domain.

10th. Deny that said lands within the thirty-mile limits of and appertaining to the said Atlantic and Pacific Railroad Company were not granted to the Southern Pacific Railroad Company by either or any of said Acts of Congress, deny that they were set apart and devoted by the United States to aid in the construction of said Atlantic and Pacific Railroad; deny that they were reserved from or excepted out of all grants made to the Southern Pacific Railroad Company; and deny that neither said company

nor any of the defendants herein have any right, title or interest to said lands or any thereof by virtue of any grant made to the said Southern Pacific Railroad Company. In this behalf defendants allege that a large portion of the odd-numbered sections of land lying within twenty miles and thirty miles of the line designated on the maps accepted and approved as definitely locating the railroad which the said Act of July 27th, 1866, authorized the Atlantic and Pacific Railroad Company to construct in California, were granted to the Atlantic and Pacific Railroad Company and Southern Pacific Railroad Company in equal undivided moieties, and other large portions thereof were granted solely to the said Southern Pacific Railroad Company, and other portions thereof have been duly and properly selected by the said Southern Pacific Railroad Company, under direction of the Secretary of Interior, as indemnity lands, by and in virtue of the said Acts of Congress.

11th. Admit that all lands described in "Exhibit A" and "Exhibit B" attached to the bill of complaint, are within twenty miles of the line designated on the said maps accepted and approved as definitely locating the railroad which the said Act of July 27th, 1866, authorized the Atlantic and Pacific Railroad Company to construct in California; and admit that a large portion, but not all, of the said

lands are also within the indemnity limits and outside the primary limits of the land grant made by the Act of July 27th, 1866, unto the Southern Pacific Railroad Company; and in this behalf defendants allege that a portion of the lands described in "Exhibit B" attached to the bill of complaint are within primary limits, and not within indemnity limits of the said grant to the Southern Pacific Railroad Company, as is more particularly shown by "Exhibit B" attached to this answer; which "Exhibit B" to this answer corrects the numerous errors and misstatements made in "Exhibit B" to the bill of complaint.

12th. Admit that they (defendants) have claimed and still claim some title and interest in a large portion of, but not in all, the lands described in "Exhibit A" and "Exhibit B" attached to the bill of complaint; but deny that such claim is regardless of the, or any, rights of the United States; deny that the precise nature or extent of such claim is unknown to the United States; deny that such claim is unfounded, in whole or part; and allege that such claim is in all respects meritorious and valid, as more fully appears by reference to "Exhibit A" and "Exhibit B" attached to and made part of this answer.

13th. Admit that within the indemnity limits of each of said grants of 1866 and 1871 to the said

Southern Pacific Railroad Company, there still remains more than one hundred thousand acres of public land in odd sections properly subject to selection, but unselected by said company. In this behalf defendants allege, on information and belief, that all lands realized or to be realized within primary limits, together with all lands realized or selected (including all lands of "Exhibit A" and "Exhibit B" to the bill of complaint), subject of selection or to become subject of selection, within indemnity limits of the grant made by the said Act of July 27th, 1866, unto the Southern Pacific Railroad Company, equal or make the quantity of land granted to the company by the said Act; and allege, on information and belief, that all lands realized or to be realized within primary limits, together with all lands realized or selected (including all lands of "Exhibit A" and "Exhibit B" to the bill of complaint), subject of selection or to become subject of selection, within indemnity limits of the grant made by the said Act of March 3d, 1871, unto the Southern Pacific Railroad Company, equal or make the quantity of land granted to the said company by the said Act.

14. Admit that on June 30th, 1903, (but not on any of the other dates stated in the bill of complaint) a patent was issued by the proper officers of the United States, purporting to convey to the said Southern Pacific Railroad Company all the land de-

scribed in Exhibit "A" to the bill of complaint, as lands inuring to said company under the indemnity provisions of the grant made to it by the said Act of July 27th, 1866; but deny that said patent was issued inadvertently, or by error or mistake, and allege that it was in all respects duly, properly and lawfully issued.

15th. Admit that the said Southern Pacific Railroad Company has sold, or issued contracts to sell, a large portion of but not all, the lands described in "Exhibit A" attached to the bill of complaint; but deny that the, or any, moneys received from such sales, or from any of such sales, are or at any time were, held by said company or any of these defendants, in trust for the United States, or subject to a lien in favor of the United States to the extent of \$1.25 per acre, or to any extent whatever. The defendants allege that "Exhibit A" attached to and made part of this answer, truly and correctly shows the full particulars of all such sales, including all moneys received therefor; and further allege that the said "Exhibit A" fully and truly answers all interrogatories propounded by the bill of complaint herein.

16th. Admit that the sales shown by "Exhibit A" to this answer, were each and all made to purchasers in good faith; but deny that the defendant, Southern Pacific Railroad Company, claims or pretends

that the title of such purchasers, or any thereof, were confirmed by the Act of Congress of March 2d, 1896, referred to in the bill of complaint; and deny that the defendant, Southern Pacific Railroad Company claims or pretends that it has received more than \$1.25 per acre, or any sum whatever, on account of such sales in payment for the lands thereof. These defendants are advised, and so allege, that were it true that the said patent was erroneously or mistakenly issued to the said Southern Pacific Railroad Company for lands to which the said Company was not entitled, as alleged in the bill of complaint and denied in this answer, then and in that case the title of each of the purchasers shown on "Exhibit A" to the bill of complaint would stand confirmed to the lands of their purchases, respectively.

17. Admits that all lands described in "Exhibit A" to the bill of complaint are of the value of \$1.25 per acre and over.

18th. Admit and allege that in the former suits referred to in the bill of complaint, brought by the United States against the Southern Pacific Railroad Company and others, it was finally and conclusively adjudged by the Supreme Court of the United States as is reported in Volume 146 of United States Reports on pages 570 and 619, Volume 168 of United States Reports on pages 1 to 67, and Volume 183 of United States Reports on pages 519 to 535; but deny

that it has been finally, conclusively or otherwise, determined in said suits or in any suits, as is alleged and set forth in the bill of complaint. Defendants refer to the said United States Reports in support of the denials of this paragraph, and to truly show unto this Court what the Supreme Court of the United States did decide in those cases.

19th. Admit that the decree referred to in the bill of complaint as entered on July 19th, 1894, in case No. 184 on the docket of the United States Circuit Court for the Southern District of California, did adjudge all patents theretofore issued by the United States to the said Southern Pacific Railroad Company for any of the lands in said decree described, vacated and annulled; but deny that any land described in "Exhibit A" or "Exhibit B" to the bill of complaint, was embraced by any patent issued to the said Southern Pacific Railroad Company prior to the date of that decree; and allege that no patent issued to the said Southern Pacific Railroad Company or these defendants for any land described in "Exhibit A" or "Exhibit B" to the bill of complaint in this case No. 1114, was or is in anywise vacated, annulled, or affected by the said decree vacating and annulling patents. Defendants further allege that pursuant to right given by the United States Supreme Court in its decision reported in Volume 168 of the United States Reports at pages

1 to 67, the United States moved the said Circuit Court for further judgment in the said case No. 184, and dismissed further proceedings as to a large quantity of the land described in the said decree of July 19th, 1894; and thereafter such proceedings were had, on appeals by the United States from the further decree of the said Circuit Court and the decree of the United States Circuit Court of Appeals in the said case, as that the Supreme Court of the United States decided as is reported in Volume 184 of the United States Reports at pages 49 to 61, to which these defendants refer.

20th. Admit that by the said decree of July 19th, 1894, the United States was adjudged to be the owner by title in fee simple absolute of certain lands therein described; and admit that by the terms of said decree the said Southern Pacific Railroad Company and the trustees of its mortgage bonds were forever enjoined and restrained from claiming or asserting any right, title or interest in or to those lands, or any thereof; but defendants are advised, and so allege, that the intent and effect of said decree was to quiet and confirm the title of the United States as to all such lands against any and all right, title, or interest which those defendants then held or claimed, and to forever enjoin those defendants from claiming or asserting any right, title or interest theretofore or at the date of said decree claimed or held by them;

and these defendants are further advised, and so allege, that the said decree was not intended to, nor did it, enjoin or restrain those defendants, or these defendants, from thereafter acquiring right, title or interest in or to such lands by purchase, indemnity selection, or other proper and lawful way or method, from and under the title of the United States thereto.

21st. Admit that since July 19th, 1894, the said Southern Pacific Railroad Company has applied to the proper officers of the United States to be permitted to select indemnity land in lieu of losses sustained within the primary limits of the grant made to the Southern Pacific Company by the said Act of July 27th, 1866, for which losses it then was and still is entitled to lieu lands in equal quantity from and of the vacant and unappropriated nonmineral and surveyed odd sections of public land within limits defined and established by the said Act for Indemnity selection by the said Southern Pacific Railroad Company; and admit that, in a few instances, such applications embraced lands which were described in and subject of the said decree of July 19th, 1894, while in all other instances the said applications embraced lands which were not described in or subject of the said decree of July 19th, 1894, but were and are within primary limits of the forfeited Atlantic and Pacific grant. Defendants deny that said applications, or any part thereof, were in violation of the

said decree of July 19th 1894; and defendants allege that at all the times when said applications to select were made, the lands thereof were vacant and unappropriated nonmineral and surveyed public lands of the United States, odd sections and parts of odd sections within the limits fixed by the said Act of July 27th, 1866, for indemnity selection by the said Southern Pacific Railroad Company.

22d. Deny that the defendant Southern Pacific Railroad Company has threatened from time to time to select other lands within said Atlantic and Pacific grant limits as indemnity inuring to said Company; but admit and allege that the said defendant will, when and at such time or times as it deems advisable, apply to the proper officers of the United States to be permitted to select, under direction of the Secretary of the Interior, in lieu of losses of equal amount sustained in the primary limits of its said grants and for which it is entitled to make indemnity selections, odd sections and parts of odd sections lying within indemnity limits fixed by the said Acts for indemnity selected by the said Company, as are vacant and unappropriated surveyed nonmineral public land of the United States at the date of application to select the same and these defendants are advised, and so allege, that the defendants Southern Pacific Railroad Company is lawfully entitled to make such applications to select at any and all times, notwithstand-

ing the lands applied for were at a former time reserved from selection because of withdrawal for a railroad grant or other cause, provided the lands applied for are vacant and unappropriated surveyed nonmineral public lands of the United States, odd sections and parts of odd sections restored to and constituting a part of the public domain at the date of application to select.

23d. Admit that the said selections were placed on records of the General Land Office at Washington and of the United States land office at Los Angeles, but deny that these defendants caused them to be so placed; and allege that they were so placed by proper officers at instance and under direction of the United States, deny that the said selections so of record, or any of them, have for many years or until canceled will, greatly or at all hinder or embarrass the United States in disposing of public lands under the laws of the United States in an orderly or legal or other manner; deny that the said selections, or any of them, have prevented the settlement and entry of lands embraced thereby to the great, irreparable or any injury of the United States or citizens thereof entitled to enter or settle upon said lands or any thereof; and deny that said selections, or any thereof, were made by the said company for the purpose of hindering or embarrassing the United States in disposing of said lands, or any thereof, in

an orderly or other legal manner; deny that said selections, or any thereof, were made for the purpose of clouding, or that they or any of them do cloud, the title to said or any lands; deny that said selections, or any thereof, were made to compel payments to said Company by others desiring to legally or properly enter lands thereof under laws of the United States; and allege that no such payment was ever demanded by, tendered or paid to, the said Company or any of these defendants. And in this behalf defendants allege that each and all said selections are in the nature of petitions that the lands applied for be granted by the United States unto applicant in lieu of losses sustained by it, and are in nowise the assertion of an interest or title adverse to the title of the United States; and, furthermore, defendants allege that except in the instance aforesaid where a patent was issued by the United States unto the said Southern Pacific Railroad Company, each and all of said selections are now pending before the Secretary of the Interior, without approval or rejection yet made.

24th. Admit that Congress expressly reserved the right and power to alter, amend or repeal the said Act of July 27th, 1866, by the following provision in section 20 thereof: "And be it further enacted, That the better to accomplish the object of this act; namely, to promote the public interest and welfare

by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times, but particularly in time of war, the use and benefits of the same for postal, military, and other purposes, Congress may, at any time, having due regard for the rights of said Atlantic and Pacific Railroad Company, added to, alter, amend or repeal this Act." But defendants allege that the said Southern Pacific Railroad Company constructed and fully equipped the railroad contemplated by the said Act of July 27th, 1866, and the same was finally accepted by the United States prior to the year 1885; and that the said Company constructed and fully equipped the railroad contemplated by the said Act of March 3d, 1871, and the same was finally accepted by the United States prior to the year 1879; and these defendants are advised and believe, and so allege, that all power of Congress to alter, amend or repeal the said Act of July 27th, 1866, or the said Act of March 3d, 1871, or any provision of either thereof relating to the land grants or indemnity provisions therein made or provided for the said Southern Pacific Railroad Company, ceased and determined upon final acceptance of the said railroads, respectively, as aforesaid, if not theretofore.

25th. Deny that the Act of Congress approved March 3d, 1887, or the Act of Congress approved March 2d, 1896, referred to in the bill of complaint, was or were passed in pursuance of the, or any, right or power of Congress to alter, amend or repeal the said Act of July 27th, 1866, or the said Act of March 3d, 1871, or any provision of either of said Acts relating to the land grants or indemnity provisions therein made and provided for the said Southern Pacific Railroad Company, and these defendants are advised and believe that neither the said Act of March 3d, 1887 or the said Act of March 2d, 1896, was or were intended to, did, or could, alter, amend, or repeal the said Act of July 27th, 1866, or the said Act of March 3d, 1871, or any provision of either thereof relating to the land grants or indemnity provisions therein made and provided for the said Southern Pacific Railroad Company.

26th. Admit and allege that the Act of Congress approved on March 2d, 1896, referred to in the bill of complaint, provides as is published in the United States Statutes at Large, Volume 29, pages 42 and following, to which defendants refer; but deny that the said Act provides as is set forth in the bill of complaint, in the manner and form therein stated.

27th. Deny that the said Southern Pacific Railroad Company, these defendants or any of them, duly or otherwise accepted the terms or conditions of the

said Act of March 3d, 1887, or the terms or conditions of the said Act of March 2d, 1896; deny such legislation is greatly, or at all, in the interest of said company, and in this behalf allege that in so far as those Acts seek to confirm the title of certain purchasers or lands at cost and expense of railroad companies and seek to fix a price to be paid by such companies unto the United States the provisions of those Acts, and each of them, are largely against the interests and lawful rights of said company and these defendants; admit that in numerous suits between the United States and the said Southern Pacific Railroad Company, the said company has by plea, answer and otherwise, alleged and shown sales of lands to persons whose title is declared confirmed by the said Act of March 2d, 1896; admit that in pursuance of proofs of such sales, decrees have been entered adjudging confirmation of land titles by the said Act of March 2d, 1896, held by purchasers from said company; but deny that the said company, or these defendants, is or are thereby, or for any cause, estopped from denying acceptance of the said Acts, or either of them. In this behalf defendants allege that they are informed and believe that the provisions of said Acts declaring a class of persons therein specified to be bona fide purchasers, and the provisions of the said act of March 2d, 1896, declaring certain titles confirmed, are each and all gratuitous and absolute pro-

visions made by Congress, wholly independent of other provisions of said Acts purporting to impose specified costs and charges against railroad companies, and purporting to create and provide right of suit or action to recover such costs and charges; and defendants are advised and believe, and so allege, that the said Acts, in so far as they seek or purport to impose costs or charges against railroad companies, or to provide right of suit or action to recover such costs or charges, are unjust, unlawful, and not properly enforceable.

28th. Deny that in determining what lands described in "Exhibit A" to the bill of complaint have been sold to bona fide purchasers, or in determining what payments have been made or by whom made or what has been received by or what remains unpaid to said company upon such sales, or what amount (if any) is owing to the United States, great or any complexity is involved; and allege that such determinations, each and all, present a simple question in elementary arithmetic, without complexity, counterclaim or offset. In this behalf defendants allege that they are advised and believe that if the United States has any claim or demand whatsoever against them or either of them for the recovery of money, arising or to arise out of any matter or thing set forth in the bill of complaint, the United States

has a plain, speedy and adequate remedy at law, in assumpsit, for recovery of the same.

29th. And these defendants deny all and all matter, cause or thing in plaintiff's bill of complaint contained, material or necessary for them to make answer to and not herein well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of any of them (these defendants). All of which matters and things these defendants are ready and willing to aver, maintain, and prove as this Honorable Court may direct; and these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WM. SINGER, Jr.,

Attorney for the Defendants.

WM. F. HERRIN,

Counsel for the Defendants.

State of California,

City and County of San Francisco,—ss.

J. L. Wilcutt now makes solemn oath and says: I am Secretary of the Southern Pacific Railroad Company, one of the defendants in the foregoing suit or action. In so far as the foregoing answer relates or refers to acts or things done or performed by me as such Secretary, the same is true of my own knowl-

edge; and as to all other matters and things therein set forth, I believe the same to be true.

J. L. WILCUTT.

Subscribed and sworn to before me on June 30th 1904.

[Seal]

E. B. RYAN.

Notary Public in and for the City and County of San Francisco, State of California.

Exhibit "A" to Joint and Several Answer of Defendants to Bill of Complaint.

Defendants' answer to interrogatories propounded by the bill of complaint herein, as to lands described in "Exhibit A" attached to and made part thereof; all of which lands are alleged in the said bill of complaint and admitted in this answer to be within primary limits of the grant to the Atlantic and Pacific Railroad Company and indemnity limits for the Southern Pacific Railroad Company, provided by the Act of Congress of July 27th, 1866, referred to in the said bill and answer. All land descriptions are San Bernardino Base and Meridian.

1. The Southern Pacific Railroad Company issued Contract No. 3797, on July 11th, 1884, to M. L. Wicks who on January 6th, 1890, assigned his interest therein to James Galloway, Jr., for the sale of the S. $\frac{1}{2}$ of N W. $\frac{1}{4}$, S. $\frac{1}{2}$ of S E. $\frac{1}{4}$, and S W. $\frac{1}{4}$ (erroneously described in the bill as "S. $\frac{1}{4}$ ") of section 3, township 7 north, range 13 west, contain-

ing 320 acres, for the agreed purchase price of \$800, with interest at the rate of 7 per cent per annum on unpaid purchase; under which contract \$160 has been paid for principal and \$44.80 has been paid for interest.

2. The said company is sued Contract No. 3798, on July 11th, 1884, to M. L. Wicks, for the sale of N. $\frac{1}{2}$ of section 5, same township and range, containing 317.80 acres, for the agreed purchase price of \$794.50, with interest at the rate of 7 per cent per annum on unpaid purchase price; under which contract \$158.90 has been paid for principal and \$355.92 has been paid for interest. On April 7th, 1891, M. L. Wicks assigned his interest in the said contract to John McCoy and C. B. Van Every; on April 8th, 1892, John McCoy assigned his interest in said contract to H. G. Gates; on September 16th, 1897, C. B. Van Every assigned his interest in said contract to Mary R. Ottaway; and on February 1st, 1898, H. G. Gates assigned his interest to Mary R. Ottaway.

3. The said company issued Contract No. 3799, on July 11th, 1884, to M. L. Wicks, for sale of the S. $\frac{1}{2}$ of section 5, same township and range, containing 320 acres, for the agreed purchase price of \$800, with interest at the rate of 7 per cent per annum on unpaid purchase price; under which contract \$800 has been paid for principal and \$231.72 has been paid for interest. On September 21st, 1889, M. L.

Wicks assigned his interest in the said contract to George Dall and James Dall.

4. The said company issued Contract No. 3484, on April 30th, 1884, to M. L. Wicks, for sale of the N. $\frac{1}{2}$ of section 9, same township and range, containing 320 acres, for the agreed purchase price of \$800, with interest at the rate of 7 per cent per annum on unpaid purchase price; under which contract \$160 has been paid for principal and \$224 has been paid for interest. On September 27th, 1888, M. L. Wicks assigned his interest in the said contract to J. G. Miller.

5. The said company issued Contracts Nos. 4032, 4033 and 4034, on October 21st, 1884, to M. L. Wicks, for sale of the NW. $\frac{1}{4}$ of section 11, same township and range, containing 160 acres, for total agreed purchase price of \$400, with interest at the rate of 7 per cent per annum on unpaid purchase price; under which contracts \$400 has been paid for principal and \$433.85 has been paid for interest; in consideration of which payments deed of grant conveying said quarter section was executed and delivered to Perry T. Neeley, on March 1st, 1904; the said contracts having been assigned by M. L. Wicks to Perry T. Neeley on June 2d, 1892.

6. The NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of section 7, in township 6 north, range 8 west, containing 40 acres, was applied for by the defendant Southern Pacific Rail-

road Company on November 10th, 1902, in indemnity selection list No. 93, Los Angeles land office, in pursuance of which patent was issued by the United States on June 30th, 1903, conveying the said tract, with other lands, unto said company; but the said company has not constructed to sell, nor sold, the said tract.

Exhibit "B" to Joint and Several Answer of Defendants to Bill of Complaint.

1. The following lands described in "Exhibit B" to the bill of complaint are within primary limits (not within indemnity limits as therein stated), of the grant made to the Southern Pacific Railroad Company by the Act of July 27th, 1866, and a large portion thereof have been patented to the said company as such primary lands, and a portion of such patented lands have been sold by said company under credit contract, to wit: Sections 3, 5, N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of section 7, N. $\frac{1}{2}$ of NE., N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of section 9, N. $\frac{1}{2}$, and N. $\frac{1}{2}$ of S. $\frac{1}{2}$ of section 11, all in township 6 north, range 10 west, San Bernardino Base and Meridian.

2. In many instances the same lands are several times described in "Exhibit B" to the bill of complaint.

3. Under the heading "Remarks," erroneous list numbers and erroneous dates are frequently given in "Exhibit B" to the bill of complaint.

4. In instances lands are described in "Exhibit B" to the bill of complaint which have not been applied for nor selected by the said Southern Pacific Railroad Company or these defendants.

[Endorsed]: Law Office of Joseph H. Call, rooms 308, 309, Currier Building, Los Angeles, California. July 4, '04 Wm. Singer, Jr. Dear Mr. Singer. Recd. Ans. of S. P. R. Co. et al. in Case 1114, So. Dist. Cal. J. H. Call. No. 1114 U. S. Circuit Court, Southern District of California. Southern Division. United States vs. Southern Pacific Railroad Co. et al. Defendants' Answer. Filed Jul. 5, 1904. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm. Singer, Jr., No. 49 Second St., San Francisco, Cal., Atty. for Defts.

*In the United States Circuit Court, Southern District
of California, Southern Division, Ninth Circuit.*

No. 1,114.

UNITED STATES OF AMERICA,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
and Others.

Defendants.

Replication of United States to Answer of Southern Pacific Railroad Company et al.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this Honorable Court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

July 25, 1904.

JOSEPH H. CALL,

Special Asst. U. S. Atty., and of Counsel for Complainant.

[Endorsed]: No. 1,114. In the U. S. Circuit Court, Southern Dist. of Cal., Southern Division. United States of America, Complainant, vs. Southern Pacific Railroad Co. et al., Defendants. Filed Jul. 25, 1904. Wm. M. Van Dyke, Clerk. Joseph H. Call, Special Asst. U. S. Atty.

In the Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California, Southern Division.

No. 1114.

THE UNITED STATES,

Complainants,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY (a Corporation), D. O. MILLS and HOMER S. KING, Trustees, and THE CENTRAL TRUST COMPANY OF NEW YORK, Trustee,

Defendants.

Enrollment.

The complainants filed their bill of complaint herein on the 11th day of April, 1904, which is hereto annexed.

A writ of subpoena directed to the United States Marshal for the Northern District of California, requiring the defendants, the Southern Pacific Railroad Company, a corporation, D. O. Mills and Homer S. King, trustees, to appear and answer to said bill of complaint was thereafter on the 12th day of April, 1904, issued returnable on the 6th day of June, 1904, which is hereto annexed.

On the 14th day of April, 1904, the Court made and entered an order herein that the defendants D. O. Mills and Homer S. King as trustees, and the Central Trust Company of New York, a corporation, trustee, appear herein on or before the first Monday of June, A. D. 1904, and answer or demur to the bill of complaint in said suit, on or before the first Monday in July, A. D. 1904, a copy of which order is hereto annexed.

The defendants Southern Pacific Railroad Company, D. O. Mills and Homer S. King, trustees, and the Central Trust Company of New York, trustee, appeared herein on the 6th day of June, 1904, by Wm. F. Herrin, Esq., their counsel, and Wm. Singer, Jr., Esq., their solicitor.

On the 5th day of July, 1904, the joint and several answer of the defendants Southern Pacific Railroad Company, D. O. Mills and Homer S. King, trustees, and the Central Trust Company of New York, trustee, to complainants' bill of complaint was filed herein, and is hereto annexed.

The replication of complainants to the answer of defendants, Southern Pacific Railroad Co. and others, was filed herein on the 25th day of July, 1904, and is hereto annexed.

Testimony was thereafter taken on behalf of the respective parties and filed in the clerk's office of said Circuit Court.

On the 10th day of July, 1905, being a day in the July Term, A. D. 1905, of said Circuit Court, said cause came on to be heard before the Court on the pleadings and proofs, and having thereupon been submitted to the court before the Honorable Erskine M. Ross, Circuit Judge, for its consideration and decision upon the pleadings and proofs, and upon briefs theretofore filed and which were thereafter filed, and the Court having duly considered the same and being fully advised in the premises, thereafter on the 21st day of January, 1907, being a day in the January Term, A. D. 1907, of said Circuit Court, ordered that a decree be entered herein for the complainants in respect to such of the lands here in controversy as were included in the decree entered in case No. 184 in this court, and in respect to all other lands embraced by the bill herein, that judgment be entered for the defendants; and accordingly on the 18th day of March, 1907, a final decree was signed, filed, entered and recorded herein, and is hereto annexed.

Case No. 1114.

*United States Circuit Court, Ninth Circuit, Southern
District of California, Southern Division.*

UNITED STATES,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
et al.,

Defendants.

Decree.

This cause came on for final decree, in open court, this 18th day of March, 1907.

The complainant, the United States, appeared by Mr. Joseph H. Call, Special Assistant United States Attorney; and the defendants Southern Pacific Railroad Company, D. O. Mills and Homer S. King, as trustees, and Central Trust Company of New York, as trustee, appeared by Mr. Wm. F. Herrin, their counsel, and by Mr. Wm. Singer, Jr., their attorney.

Issue having been joined, the testimony having been taken, and the cause having been argued and submitted, the Court, being fully advised in the premises, finds, orders, adjudges and decrees as follows:

Subdivision I.

The Court finds and determines that all lands described in this subdivision of this decree are within common primary limits of the grants made unto the Atlantic and Pacific Railroad Company and to the Southern Pacific Railroad Company by Act of Congress, approved July 27th, 1866 (14 Stats. 22); and by stipulation of counsel for complainant and the defendants, on file herein, it is ordered, adjudged and decreed that the complainant's bill of complaint is hereby dismissed, without prejudice, as to sections one (1), three (3), five (5), north half of northeast quarter (N. $\frac{1}{2}$ of NE. $\frac{1}{4}$) of section seven (7), north half of northeast quarter (N. $\frac{1}{2}$ of NE. $\frac{1}{4}$), north half of northwest quarter (N. $\frac{1}{2}$ of NW. $\frac{1}{4}$) of section nine (9), north half (N. $\frac{1}{2}$), and north half of south half of (N. $\frac{1}{2}$ of S. $\frac{1}{2}$) of section eleven (11), in township six (6) north, range ten (10) west, San Bernardino Base and Meridian.

Subdivision II.

The Court finds and determines, that all lands described in this decree, other than the lands described in the foregoing "Subdivision I" thereof, are within primary limits of the grant made unto the Atlantic and Pacific Railroad Company, and were restored to the public domain, as public land, by Act of Congress, approved July 6th, 1886 (24 Stats. 123); and that all lands described in this decree, other than the

lands described in the foregoing "Subdivision I" thereof, are within indemnity limits of the grant made unto the Southern Pacific Railroad Company by the said Act of Congress, approved July 27th, 1866.

Subdivision III.

The Court finds and determines that all lands described in this subdivision of this decree, were duly and lawfully patented by the United States unto the Southern Pacific Railroad Company, as indemnity lands granted to and selected by it, by and under the indemnity provisions of its grant made by the said Act of July 27th, 1866.

It is, therefore, ordered, adjudged and decreed that the complainant's bill of complaint herein be, and hereby is, dismissed as to the south half of north-west quarter (S. $\frac{1}{2}$ of NW. $\frac{1}{4}$), south half of south-east quarter (S. $\frac{1}{2}$ of SE. $\frac{1}{4}$), and southwest quarter (SW. $\frac{1}{4}$) of section three (3), all of section five (5), north half (N. $\frac{1}{2}$) of section nine (9), north-west quarter (NW. $\frac{1}{4}$) of section eleven (11), in township seven (7) north, range thirteen (13) west, San Bernardino Base and Meridian.

Subdivision IV.

The Court finds and determines, that all lands described in this subdivision of this decree, have been selected by the Southern Pacific Railroad Company as indemnity lands granted to it by the said Act of

Congress, approved July 27th, 1866; and that said selections are now pending before, but have not yet been finally approved by, the Secretary of Interior; that the present title to and ownership of the said lands is vested in the United States, subject to the right of the Southern Pacific Railroad Company to select the said lands under the direction and approval of the Secretary of Interior, in accordance with the provisions of the said Act of Congress of July 27th, 1866; and that the right of the Southern Pacific Railroad Company to select said lands as indemnity as aforesaid, is not affected or impaired by the fact that said lands are within primary limits of the grant made unto the Atlantic and Pacific Railroad Company by the said Act of July 27th, 1866, declared forfeited by the said Act of July 6th, 1886.

It is, therefore, ordered, adjudged and decreed that the complainant's bill of complaint be and hereby is dismissed as to the following lands, described by reference to San Bernardino Base and Meridian, without prejudice to the rights of the United States except as aforesaid, to wit:

The south half of northeast quarter (S. $\frac{1}{2}$ of NE. $\frac{1}{4}$) of section eleven (11), in township seven (7) north, range thirteen (13) west.

South half of northeast quarter (S. $\frac{1}{2}$ of NE. $\frac{1}{4}$), northwest quarter (NW. $\frac{1}{4}$) and south half (S $\frac{1}{2}$) of section seven (7); south half of northwest quarter

(S. $\frac{1}{2}$ of NW. $\frac{1}{4}$), south half of northeast quarter (S. $\frac{1}{2}$ of NE. $\frac{1}{4}$) and south half (S. $\frac{1}{2}$) of section nine (9); south half of southwest quarter (S. $\frac{1}{4}$ of SW. $\frac{1}{4}$) and south half of southeast quarter (S. $\frac{1}{2}$ of SE. $\frac{1}{4}$) of section eleven (11); all of section thirteen (13), fifteen (15), seventeen (17), nineteen (19), twenty-one (21), twenty-three (23), twenty-five (25) twenty-seven (27), twenty-nine (29), thirty-one (31), thirty-three (33), and thirty-five (35), in township six (6) north, range ten (10) west.

South half of southwest quarter (S. $\frac{1}{2}$ of SW. $\frac{1}{4}$), and east (E. $\frac{1}{2}$) of section one (1); south half of southeast quarter (S. $\frac{1}{2}$ of SE. $\frac{1}{4}$) of section three; southeast quarter of northwest quarter (SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$), south half of northeast quarter (S. $\frac{1}{2}$ of NE. $\frac{1}{4}$), southwest quarter of southwest quarter (SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$) and east half of southwest quarter (E. $\frac{1}{2}$ of SW. $\frac{1}{4}$) and southeast quarter (SE. $\frac{1}{4}$) of section seven (7); south half of northwest quarter (S. $\frac{1}{2}$ of NW. $\frac{1}{4}$) south half of northeast quarter (S. $\frac{1}{2}$ of NE. $\frac{1}{4}$) and south half (S. $\frac{1}{2}$) of section nine (9); all of sections eleven (11) and thirteen (13); north half (N. $\frac{1}{2}$), southeast quarter (SE. $\frac{1}{4}$) and east half of southwest quarter (E. $\frac{1}{2}$ of SW. $\frac{1}{4}$) of section fifteen (15); all of sections seventeen (17), nineteen (19), twenty-one (21), twenty-three (23), twenty-five (25), twenty-seven

(27), twenty-nine (29), thirty-one (31), thirty-three (33), and thirty-five (35), in township six (6) north, range nine (9) west.

South half of northwest quarter (S. $\frac{1}{2}$ of NW. $\frac{1}{4}$), northeast quarter (NE. $\frac{1}{4}$), and south half (S. $\frac{1}{2}$) of section twenty-five (25); south half of southwest quarter (S. $\frac{1}{2}$ of SW. $\frac{1}{4}$), and south half of southeast quarter (S. $\frac{1}{2}$ of SE. $\frac{1}{4}$) of section twenty-seven (27); south half of northwest quarter (S. $\frac{1}{2}$ of NW. $\frac{1}{4}$), south half of northeast quarter (S. $\frac{1}{2}$ of NE. $\frac{1}{4}$), and south half (S. $\frac{1}{2}$) of section thirty-three (33); all of section thirty-five (35), in township seven (7) north, range eight (8) west.

West half (W. $\frac{1}{2}$), southeast quarter (SE. $\frac{1}{4}$), northwest quarter of northeast quarter (NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$) and south half of northeast quarter (S. $\frac{1}{2}$ of NE. $\frac{1}{4}$) of section seven (7); west half of northwest quarter (W. $\frac{1}{2}$ of NW. $\frac{1}{4}$), and west half of southwest quarter (W. $\frac{1}{2}$ of SW. $\frac{1}{4}$) of section seventeen (17); all of fractional section nineteen (19); west half (W. $\frac{1}{2}$), west half of northeast quarter (W. $\frac{1}{2}$ of NE. $\frac{1}{4}$) and west half of southeast quarter (W. $\frac{1}{2}$ of SE. $\frac{1}{4}$) of section twenty-nine (29); all of fractional section thirty-one (31), in township six (6) north, range eight (8) west.

South half of southwest quarter (S. $\frac{1}{2}$ of SW. $\frac{1}{4}$) and southwest quarter of southeast quarter (SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$) of section thirteen (13); east half of

northeast quarter (E. $\frac{1}{2}$ of NE. $\frac{1}{4}$), and east half of southeast quarter (E. $\frac{1}{2}$ of SE. $\frac{1}{4}$), west half of southeast quarter (W. $\frac{1}{2}$ of SE. $\frac{1}{4}$), and southwest quarter (SW. $\frac{1}{4}$) of section fifteen (15); south half of southeast quarter (S. $\frac{1}{2}$ of SE. $\frac{1}{4}$) of section seventeen (17); south half of southwest quarter (S. $\frac{1}{2}$ of SW. $\frac{1}{4}$), south half of northeast quarter (S. $\frac{1}{2}$ of NE. $\frac{1}{4}$), and southeast quarter (SE. $\frac{1}{4}$) of section nineteen (19); all of sections twenty-one (21), twenty-three (23), twenty-five (25), twenty-seven (27), twenty-nine (29), thirty-one (31) and thirty-three (33); west half of northeast quarter (W. $\frac{1}{2}$ of NE. $\frac{1}{4}$), west half of southeast quarter (W. $\frac{1}{2}$ of SE. $\frac{1}{4}$), west half (W. $\frac{1}{2}$), east half of northeast quarter (E. $\frac{1}{2}$ of NE. $\frac{1}{4}$), and east half of southeast quarter (E. $\frac{1}{2}$ of SE. $\frac{1}{4}$) of section thirty-five (35), in township seven (7) north, range seven (7) west.

All of fractional section one (1); east half (E. $\frac{1}{2}$) of section thirteen (13); east half of northeast quarter (E. $\frac{1}{2}$ of NE. $\frac{1}{4}$), and east half of southeast quarter (E. $\frac{1}{2}$ of SE. $\frac{1}{4}$) of section twenty-five (25), in township six (6) north, range seven (7) west.

East half of northwest quarter (E. $\frac{1}{2}$ of NW. $\frac{1}{4}$), east half of southwest quarter (E. $\frac{1}{2}$ of SW. $\frac{1}{4}$), and east half (E. $\frac{1}{2}$) of section one (1), in township five (5) north, range seven (7) west.

South half of northwest quarter (S. $\frac{1}{2}$ of NW. $\frac{1}{4}$) and south half (S. $\frac{1}{2}$) of section nineteen (19); south half of southwest quarter (S. $\frac{1}{2}$ of SW. $\frac{1}{4}$), and south half of southeast quarter (S. $\frac{1}{2}$ of SE. $\frac{1}{4}$) of section twenty-seven (27); all of section twenty-nine (29); all of fractional section thirty-one (31); all of sections thirty-three (33) and thirty-five (35), in township seven (7) north, range six (6) west.

All of fractional sections one (1), three (3), five (5), seven (7), nine (9), and eleven (11); northeast quarter (NE. $\frac{1}{4}$) and west half (W. $\frac{1}{2}$) of section thirteen (13); all of sections fifteen (15) and seventeen (17); all of fractional section nineteen (19); all of sections twenty-one (21), twenty-three (23), twenty-five (25), twenty-seven (27), twenty-nine (29), thirty-one (31), thirty-three and thirty-five (35), in township six (6) north, range six (6) west.

All of fractional sections one (1), three (3), five (5), and seven (7); all of sections nine (9) and eleven (11); all of fractional sections thirteen (13) and fifteen (15); north half (N. $\frac{1}{2}$) of section seventeen (17); north half of northwest quarter (N. $\frac{1}{2}$ of NW. $\frac{1}{4}$), and north half of northeast quarter (N. $\frac{1}{4}$ of NE. $\frac{1}{4}$) of section twenty-three (23); in township five (5) north, range six (6) west.

South half (S. $\frac{1}{2}$) of section thirty-one (31), south half of southwest quarter (S. $\frac{1}{2}$ of SW. $\frac{1}{4}$), and

south half of southeast quarter (S. $\frac{1}{2}$ of SE. $\frac{1}{4}$) of section thirty-three (33); south half of southwest quarter (S. $\frac{1}{2}$ of SW. $\frac{1}{4}$) and south half of southeast quarter (S. $\frac{1}{2}$ of SE. $\frac{1}{4}$) of section thirty-five (35), in township seven (7) north, range five (5) west.

All of fractional sections one (1), three (3), five (5) and seven (7); all of sections nine (9), eleven (11) and thirteen (13); northwest quarter (N.W. $\frac{1}{4}$), and east half (E. $\frac{1}{2}$) of section fifteen (15); all of sections seventeen (17) and nineteen (19); all of sections twenty-one (21), twenty-three (23) and twenty-five (25); north half (N. $\frac{1}{2}$) and southeast quarter (SE. $\frac{1}{4}$) of section twenty-seven (27); all of section twenty-nine (29); southeast quarter (SE. $\frac{1}{4}$) and west half (W. $\frac{1}{2}$) of section thirty-one (31); southeast quarter (SE. $\frac{1}{4}$), and west half (W. $\frac{1}{2}$) of section thirty-three (33), and all of section thirty-five (35), in township six (6) north, range five (5) west.

North half (N. $\frac{1}{2}$) of section twenty-one (21) and north half (N. $\frac{1}{2}$) of section twenty-three (23), in township five (5) north, range five (5) west.

East half of northwest quarter (E. $\frac{1}{2}$ of NW. $\frac{1}{4}$), east half of southwest quarter (E. $\frac{1}{2}$ of SW. $\frac{1}{4}$), and east half (E. $\frac{1}{2}$) of section seven (7); west half (W. $\frac{1}{2}$) of section seventeen (17); southeast quarter of northeast quarter (SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$), north

half of southeast quarter (N. $\frac{1}{2}$ of SE. $\frac{1}{4}$) and southwest quarter of southeast quarter (SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$) of section nineteen (19); all of section twenty-five (25); north half (N. $\frac{1}{2}$), north half of southeast quarter (N. $\frac{1}{2}$ of SE. $\frac{1}{4}$), and north half of southwest quarter (N. $\frac{1}{2}$ of SW. $\frac{1}{4}$) of section twenty-nine (29); all of sections thirty-one (31), thirty-three (33) and thirty-five (35), in township six (6) north, range four (4) west.

All of fractional sections one (1), three (3), five (5), seven (7) and nine (9); all of sections eleven (11), thirteen (13), fifteen (15) and seventeen (17); north half (N. $\frac{1}{2}$) of section nineteen (19); north half (N. $\frac{1}{2}$), north half of southeast quarter (N. $\frac{1}{2}$ of SE. $\frac{1}{4}$), and north half of southwest quarter (N. $\frac{1}{2}$ of SW. $\frac{1}{4}$) of section twenty-three (23), in township five (5) north, range four (4) west.

All of sections nine (9), twenty-seven (27), thirty-three (33) and thirty-five (35), in township six (6) north, range three (3) west.

All of fractional sections one (1) and three (3); fractional east half (fractional E. $\frac{1}{2}$) of section five (5); fractional south half (fractional S. $\frac{1}{2}$) of section seven (7); north half (N. $\frac{1}{2}$) of section nine (9); all of sections eleven (11), thirteen (13), fifteen (15) and seventeen (17); east half (E. $\frac{1}{2}$), northwest quarter (NW. $\frac{1}{4}$) east half of southwest quarter (E. $\frac{1}{2}$ of SW. $\frac{1}{4}$), and northwest quarter of southwest

quarter (NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$) of section nineteen (19); all of sections twenty-one (21) and twenty-three (23); north half (N. $\frac{1}{2}$), east half of southeast quarter (E. $\frac{1}{2}$ of SE. $\frac{1}{4}$), north half of southwest quarter (N. $\frac{1}{2}$ of SW. $\frac{1}{4}$), and southeast quarter of southwest quarter (SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$) of section twenty-five (25); north half (N. $\frac{1}{2}$), north half of southwest quarter (N. $\frac{1}{2}$ of SW. $\frac{1}{4}$), and north half of southeast quarter (N. $\frac{1}{2}$ of SE. $\frac{1}{4}$) of section twenty-seven (27), north half of northeast quarter (N. $\frac{1}{2}$ of NE. $\frac{1}{4}$), southeast quarter of northeast quarter (SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$), and north half of northwest quarter (N. $\frac{1}{2}$ of NW. $\frac{1}{4}$) of section twenty-nine (29), in township five (5) north, range three (3) west.

Northeast quarter (NE. $\frac{1}{4}$) and south half (S. $\frac{1}{2}$) of section five (5); all of fractional sections seven (7), and nineteen (19), in township five (5) north, range two (2) west.

South half of southwest quarter (S. $\frac{1}{2}$ of SW. $\frac{1}{4}$) and south half of southeast quarter (S. $\frac{1}{2}$ of SE. $\frac{1}{4}$) of section twenty-five (25); south half (S. $\frac{1}{2}$) of section twenty-seven (27); all of section thirty-five (35), in township six (6) north, range (1) west.

All of fractional section one (1), in township five (5) north, range one (1) west.

Subdivision V.

The Court finds and determines, that all lands de-

scribed in this subdivision of this decree, are also within limits of the grant made to the Southern Pacific Railroad Company by the Act of Congress, approved March 3d, 1871 (16 Stats. 573), and in suit No. 184 in this court brought by the United States against the said company and others, the said company claimed the lands described in this subdivision under its grant by the said Act of March 3d, 1871; that by final decree in said suit No. 184, it was adjudged and decreed that the United States owned all lands described in this subdivision of this decree by absolute title in fee, and that the Southern Pacific Railroad Company did not have, and was forever enjoined from claiming or asserting, any right, title or interest whatever in or to any of said lands; that since the said final decision of suit No. 184, all lands described in this subdivision of this decree have been selected by the Southern Pacific Railroad Company as indemnity lands granted to it by the said Act of Congress, approved July 27th, 1866, in indemnity selection lists now pending before, but not yet approved by, the Secretary of Interior; but that the said decree in suit No. 184 is a final and conclusive adjudication against any and all right, title or interest owned or held by, or vested in, the Southern Pacific Railroad Company, in or to the lands described in this subdivision of this decree, including

the right to thereafter make indemnity selection thereof under its said grant of July 27th, 1866.

It is, therefore, ordered, adjudged and decreed, that all selections, or applications to select, made by the Southern Pacific Railroad Company, of the lands described in this subdivision of this decree, or any thereof, are hereby canceled and annulled; and the defendants Southern Pacific Railroad Company, D. O. Mills and Homer S. King as trustees, and Central Trust Company of New York as trustee, are and each of them is, forever enjoined from asserting or claiming, adverse to the United States, any right, title or interest in the following lands, described by reference to San Bernardino Base and Meridian, to wit:

The northeast quarter (NE. $\frac{1}{4}$) and southeast quarter (SE. $\frac{1}{4}$) of section thirty-three (33); and all of section thirty-five (35), in township seven (7) north, range fourteen (14) west.

South half (S. $\frac{1}{2}$) of section nine (9); southeast quarter (SE. $\frac{1}{4}$) of section eleven (11); all of sections thirteen (13) and twenty-five (25), in township seven (7) north, range thirteen (13) west.

West half of southwest quarter (W. $\frac{1}{2}$ of SW. $\frac{1}{4}$) of section seven (7); south half (S. $\frac{1}{2}$) and northwest quarter (NW. $\frac{1}{4}$) of section seventeen (17); all of section nineteen (19); south half of southeast quarter (S $\frac{1}{2}$ of SE. $\frac{1}{4}$), and west half

(W. $\frac{1}{2}$) of section twenty-three (23); south half of northeast quarter (S. $\frac{1}{2}$ of NE. $\frac{1}{4}$), northwest quarter (NW. $\frac{1}{4}$), and south half (S. $\frac{1}{2}$) of section twenty-five (25); all of sections twenty-nine (29), thirty-three (33) and thirty-five (35), township seven (7) north, range twelve (12) west.

All of sections one (1), three (3), five (5), seven (7), nine (9), eleven (11), thirteen (13), fifteen (15), seventeen (17) nineteen (19), twenty-one (21), twenty-three (23), and twenty-seven (27); north half of southeast quarter (N. $\frac{1}{2}$ of SE. $\frac{1}{4}$) and north half (N. $\frac{1}{2}$) of section twenty-nine (29), and all of section thirty-three (33), in township six (6) north, range twelve (12) west.

Lots three (3), four (4), five (5), seven (7) and eight (8) and south half (S. $\frac{1}{2}$) of section five (5), in township five (5) north, range twelve (12) west.

All of section thirty-one (31); southwest quarter of northwest quarter (SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$), northwest quarter of southwest quarter (NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$), south half of southwest quarter (S. $\frac{1}{2}$ of SW. $\frac{1}{4}$), and south half of southeast quarter (S. $\frac{1}{2}$ of SE. $\frac{1}{4}$) of section thirty-three (33), in township seven (7) north, range eleven (11) west.

South half of southwest quarter (S. $\frac{1}{2}$ of SW. $\frac{1}{4}$) and south half of southeast quarter (S. $\frac{1}{2}$ of SE. $\frac{1}{4}$) of section one (1); south half of northeast quarter (S. $\frac{1}{2}$ of NE. $\frac{1}{4}$), northwest quarter (NW.

$\frac{1}{4}$), and south half (S. $\frac{1}{2}$) of section three (3); all of sections five (5), seven (7), nine (9), eleven (11), thirteen (13), fifteen (15) and seventeen (17); east half (E. $\frac{1}{2}$) of section nineteen (19); all of sections twenty-one (21), twenty-three (23), twenty-five (25) and twenty-seven (27); east half (E. $\frac{1}{2}$) of section twenty-nine (29); east half (E. $\frac{1}{2}$) of section thirty-three (33) and all of section thirty-five (35), in township six (6) north, range eleven (11) west.

All of section one (1); north half (N. $\frac{1}{2}$) and southeast quarter (SE. $\frac{1}{4}$) of section three (3), and east half of section eleven (11), in township five (5) north, range eleven (11) west.

North half (N. $\frac{1}{2}$) of section twenty-three (23) and northeast quarter (NE. $\frac{1}{4}$) of section twenty-five (25), in township five (5) north, range ten (10) west.

All of sections one (1), three (3), five (5), seven (7), nine (9), eleven (11), thirteen (13), fifteen (15) and seventeen (17); all of fractional section nineteen (19); north half of (N. $\frac{1}{2}$) of section twenty-three (23); northwest quarter of northeast quarter (NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$) of section twenty-seven (27) and northwest quarter (NW. $\frac{1}{4}$), and southwest quarter of northeast quarter (SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$) of section twenty-nine (29), in township five (5) north, range nine (9) west.

West half of northwest quarter (W. $\frac{1}{2}$ of NW. $\frac{1}{4}$) and west half of southwest quarter (W. $\frac{1}{2}$ of SW. $\frac{1}{4}$) of section five (5); all of fractional section seven (7); west half (W. $\frac{1}{2}$) of section seventeen (17); all of fractional section nineteen (19); north half of southwest quarter (N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$), north half of southeast quarter (N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$), and north half (N. $\frac{1}{2}$) of section twenty-one (21); north half of northwest quarter (N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$) of section twenty-three (23), and north half of northwest quarter (N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$), and north half of northeast quarter (N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$) of section twenty-nine (29), in township five (5) north, range eight (8) west.

Subdivision VI.

It is further ordered, adjudged and decreed that each party, plaintiff and defendant, pay its own costs of suit in this court.

Subdivision VII.

It is further ordered, adjudged and decreed that the bill of complaint be and hereby is dismissed without prejudice as to the northeast quarter of the northeast quarter of section seven, township six north, range eight west, and also as to any other

land described in the bill of complaint not specifically hereinbefore disposed of by this decree.

ROSS,

Circuit Judge.

Decree entered and recorded March 18, 1907.

WM. M. VAN DYKE,

Clerk.

By Chas. N. Williams,

Deputy Clerk.

O. K.—J. H. C.

[Endorsed]: Case No. 1114. U. S. Circuit Court, Ninth Circuit, Southern District of California, Southern Division. United States vs. Southern Pacific Railroad Co. et al. Decree. Filed Mar. 18, 1907. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm. Singer, Jr., Attorney for Defendants, 842 Flood Building, San Francisco.

Whereupon said bill of complaint, writ of subpoena, copy of order that the defendants appear, joint and several answer, replication of complainants to the answer of defendants, and final decree, are hereto annexed, said final decree being duly signed, filed and enrolled pursuant to the practice of said Circuit Court.

Attest, etc.,
[Seal]

WM. M. VAN DYKE,

Clerk.

By Chas. N. Williams,

Deputy Clerk.

[Endorsed]: No. 1114. In the Circuit Court of the United States Ninth Judicial Circuit, for the Southern District of California, Southern Division. The United States vs. The Southern Pacific Railroad Company et al. Enrolled Papers. Filed March 18th, 1907. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Recorded Decree Register Book No. 3, page 215.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

No. 1114.

THE UNITED STATES,

Complainants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
et al.,

Defendant.

Opinion.

Filed July 16, 1906.

By its bill in this case the complainant seeks to obtain a decree annulling a patent issued by the United States to the defendant railroad company for certain lands described in exhibit "A" annexed to the bill, and also canceling certain lists filed by the defendant

company in the United States Land Office at Los Angeles, selecting or applying to select certain indemnity lands described in exhibit "B" annexed to the bill, and to quiet the complainant's alleged title to all of the lands mentioned, and to have it determined by the Court what portions of the patented lands have been sold by the defendant company, and what portions thereof are held by bona fide purchasers, and what sums of money have been received by the defendant company for such lands, if any, and in the event it be ascertained that any of such lands have been sold by the defendant company to bona fide purchasers, that the Court adjudge that the defendant company holds the money received for such lands in trust for the complainant to the extent of \$1.25 per acre, and that the defendant company be required to account to the complainant therefor.

The agreed statement of facts shows that all of the lands in controversy are within the primary limits of the grant made by Congress to the Atlantic and Pacific Railroad Company by its act of July 27, 1866 (14 Stats. 292), and within the indemnity limits of the grant made to the defendant, Southern Pacific Railroad Company by the same act. It is also stipulated by the respective parties that a certain portion of the lands described in exhibit "B" annexed to the bill were included in the final decree entered in this Court in the case between the same parties, here num-

bered 184, and which was affirmed by the Supreme Court in 168 U. S. 1, and "that all acts of Congress and laws of the State of California, whether of public or private, general or special, nature, and all official acts and decisions of the Commissioner of the General Land Office and Secretary of the Interior, relating to the Southern Pacific Railroad Company or to the Atlantic and Pacific Railroad Company, or affecting the rights of either of said companies or of the United States, and all decisions of the Supreme Court of the United States reported in the United States Reports relating to or affecting the rights of either of said companies, in so far as relevant and material to the issues and controversies in this case, shall be deemed before this Court for judicial notice."

In deciding the case entitled *United States vs. Southern Pacific Railroad Company et al.*, and here numbered 600, this Court was of the opinion that the decision of the Supreme Court in the cases of *United States vs. Southern Pacific Railroad Company*, 146 U. S. 570; *United States vs. Colton Marble and Lime Company*, 146 U. S. 615; *United States vs. Southern Pacific Railroad Company*, *idem*, and *Southern Pacific Railroad Company vs. United States*, 168 U. S. 1, determined that the Southern Pacific Company never acquired any interest or right in or to any of the odd-numbered sections of land embraced within the granted or indemnity limits of the Atlantic and

Pacific Railroad Company, either by the grant contained in the act of July 27, 1866, or in the Joint Resolution of Congress of June 28, 1870 (16 Stats. 382), or in the act of March 3, 1871 (16 Stats. 573), 86 Fed. 962, 963.

In affirming the judgment of this Court in that case, the Circuit Court of Appeals for this Circuit took the same view of those decisions of the Supreme Court, saying, in its opinion: "The scope of these decisions of the Supreme Court cannot be mistaken. They were intended to dispose of all the questions in issue, and make it perfectly clear that all the lands embraced within the primary and indemnity limits of the Atlantic and Pacific grant, between the Colorado River and San Buenaventura, had been forfeited to the United States, and restored to the public domain, free from any claim whatever on the part of the Southern Pacific Railroad Company, and these decisions have been placed upon grounds that leave no room for the consideration of a claim of title based upon the theory that the Southern Pacific Company had acquired a right to the lands contemporaneously with the Atlantic and Pacific Company under section 18 of the act of July 27, 1866." *United States vs. Southern Pacific Railroad Company*, 98 Fed. 27, 39.

But on appeal to the Supreme Court, that tribunal took a different view of its former decisions from that taken by the Circuit Court of Appeals and by

this Court in the case cited, and declared that "It was not adjudged in those cases either that the Southern Pacific had no title to any real estate by virtue of the act of 1866, or that if there was any real estate to which it had any claim or right by virtue of that act, such claim was not of equal force with that of the Atlantic and Pacific. The general statement at the close of the quotation from 146 U. S. 607, 'that the latter company has no title of any kind to these lands,' and the similar statement in paragraph 3 of the quotation from 168 U. S. 61, are to be taken as applicable only to the facts presented, and cannot be construed as announcing any determination as to matters and questions not appearing in the records. Of course, the decrees that were rendered in those cases are conclusive of the title to the property involved in them, no matter what claims or rights either party may have had and failed to produce, but as to property which was not involved in those suits, they are conclusive only as to the matters which were actually litigated and determined." 183 U. S. 519, 533.

Accordingly, and inasmuch as Congress had, by its act of July 6, 1886 (24 Stats. 123), declared forfeited the lands granted to the Atlantic and Pacific Railroad Company, within the limits of California, the Supreme Court, in the case last cited, held that the United States held "an equal undivided moiety in all the odd numbered sections which lie within the

conflicting place limits of the grant to the Atlantic and Pacific Company and of that made to the Southern Pacific Company by the act of July 27, 1866; and that the Southern Pacific Company holds the other undivided moiety thereof."

As it was thus authoritatively determined by the Supreme Court that the act of Congress forfeiting the lands granted to the Atlantic and Pacific Company did not affect the grant made by the act of July 27, 1866, to the Southern Pacific Company in so far as it concerns the lands within the primary limits of that grant, I am unable to see any valid ground for holding that the forfeiture deprived the Southern Pacific Company of any indemnity lands covered by the same grant. There is but the one grant to the Southern Pacific Company made by the act of 1866, which embraces both classes of lands, that is to say, lands within its primary limits, and lands within its indemnity limits. According to the decision of the Supreme Court in *United States vs. Southern Pacific Railroad Company*, 183 U. S. 519, the act of July 27, 1866, gave to each of the railroad companies mentioned an undivided half of all of the odd-numbered sections falling within the primary limits of both grants, the half so granted to the Atlantic and Pacific Company afterwards reverting to the United States by virtue of the act of forfeiture. It is quite true, as suggested by counsel for the complainant,

that had the grant to the Atlantic and Pacific Company not been forfeited, it would have continued to hold its interest in the odd-numbered sections within its primary limits, and that, in that event, none of such odd-numbered sections would have been subject to selection by the Southern Pacific Company as indemnity lands; but, according to the ruling of the Supreme Court in 183 U. S. 519, that would only have been so for the reason that, in the event supposed, such odd-numbered sections would not have been public lands.

Applying the decision of the Supreme Court in the case last cited to the admitted facts in the present case, it seems to me to result, necessarily, that, except as to those of the lands in controversy as were covered by the final decree entered in the case numbered in this Court 184, and affirmed by the Supreme Court in 168 U. S. 1, there must be judgment for the defendants; for holding, as the Supreme Court did in the case reported in 183 U. S. 519, that the act forfeiting the grant to the Atlantic and Pacific Company did not affect the grant made to the Southern Pacific Company by the act of July 27, 1866, in so far as concerns the lands within the primary limits of that grant, I do not think I would be justified in holding that the forfeiture deprived that company of any indemnity lands covered by the same

grant, not included in any judgment heretofore entered.

Accordingly there will be judgment for the complainant in respect to such of the lands here in controversy as were included in the decree entered herein in case numbered 184, and in respect to all other lands embraced by the bill herein there will be judgment for the defendants.

A decree to that effect will be prepared and submitted to opposite counsel, and then to the Court for signature.

ROSS,
Circuit Judge.

[Endorsed]: No. 1114. U. S. Circuit Court, Ninth Circuit, Southern District of California, Southern Division. The United States vs. Southern Pacific Railroad Company et al. Opinion. Filed Jul. 16, 1906. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

No. 1114.

THE UNITED STATES,

Complainants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
et al.,

Defendants.

Opinion.

(Filed January 21, 1907.)

The facts of this case differ from those in the case of the United States vs. Southern Pacific Railroad Company et al., numbered 1196, just decided, for here the agreed statement of facts shows that all of the lands in controversy are within the primary limits of the grant made by Congress to the Atlantic and Pacific Railroad Company by its act of July 27, 1866 (14 Stats. 292), and within the indemnity limits of the grant made to the defendant, Southern Pacific Railroad Company by the same act. It is also stipulated by the respective parties that a certain portion of the lands described in exhibit "B" an-

nexed to the bill were included in the final decree entered in this Court in the case between the same parties, here numbered 184, and which was affirmed by the Supreme Court in 168 U. S. 1, and "that all acts of Congress and laws of the State of California, whether of public or private, general or special, nature, and all official acts and decisions of the Commissioner of the General Land Office and Secretary of the Interior, relating to the Southern Pacific Railroad Company or to the Atlantic and Pacific Railroad Company, or affecting the rights of either of said companies or of the United States, and all decisions of the Supreme Court of the United States reported in the United States Reports relating to or affecting the rights of either of said companies, in so far as relevant and material to the issues and controversies in this case, shall be deemed before this Court for judicial decision."

In deciding the case entitled *United States vs. Southern Pacific Railroad Company et al.*, and here numbered 600, this Court was of the opinion that the decision of the Supreme Court in the cases of *United States vs. Southern Pacific Railroad Company*, 146 U. S. 570; *United States vs. Colton Marble and Line Company*, 146 U. S. 615; *United States vs. Southern Pacific Railroad Company*, *idem*, 570, and *Southern Pacific Railroad Company vs. United States*, 168 U. S. 1, determined that the Southern

Pacific Company never acquired any interest or right in or to any of the odd-numbered sections of land embraced within the granted or indemnity limits of the Atlantic and Pacific Railroad Company, either by the grant contained in the act of July 27, 1866, or in the Joint Resolution of Congress of June 28, 1870 (16 Stats. 382), or in the act of March 3, 1871 (16 Stats. 573), 86 Fed. 962, 963.

In affirming the judgment of this Court in that case, the Circuit Court of Appeals for this Circuit took the same view of those decisions of the Supreme Court, saying, in its opinion: "The scope of these decisions of the Supreme Court cannot be mistaken. They were intended to dispose of all the questions in issue, and make it perfectly clear that all the lands embraced within the primary and indemnity limits of the Atlantic and Pacific grant, between the Colorado River and San Buenaventura, had been forfeited to the United States, and restored to the public domain, free from any claim whatever on the part of the Southern Pacific Railroad Company, and these decisions have been placed upon grounds that leave no room for the consideration of a claim of title based upon the theory that the Southern Pacific Company had acquired a right to the lands contemporaneously with the Atlantic and Pacific Company under section 18 of the act of July 27, 1866." *United States vs. Southern Pacific Railroad Company*, 98 Fed. 27, 39.

But on appeal to the Supreme Court, that tribunal took a different view of its former decisions from that taken by the Circuit Court of Appeals and by this Court in the case cited, and declared that "It was not adjudged in those cases either that the Southern Pacific had no title to any real estate by virtue of the act of 1866, or that if there was any real estate to which it had any claim or right by virtue of that act, such claim was not of equal force with that of the Atlantic and Pacific. The general statement at the close of the quotation from 146 U. S. 607, 'that the latter company has no title of any kind to these lands,' and the similar statement in paragraph 3 of the quotation from 168 U. S. 61, are to be taken as applicable only to the facts presented, and cannot be construed as announcing any determination as to matters and questions not appearing in the records. Of course, the decrees that were rendered in those cases are conclusive of the title to the property involved in them, no matter what claims or rights either party may have had and failed to produce, but as to property which was not involved in those suits, they are conclusive only as to the matters which were actually litigated and determined." 183 U. S. 519, 533.

Accordingly, and inasmuch as Congress had, by its act of July 6, 1886 (24 Stats. 123), declared forfeited the lands granted to the Atlantic and Pacific Rail-

road Company, within the limits of California, the Supreme Court, in the case last cited, held that the United States held "an equal undivided moiety in all the odd-numbered sections which lie within the conflicting place limits of the grant to the Atlantic and Pacific Company and of that made to the Southern Pacific Company by the act of July 27, 1866; and that the Southern Pacific Company holds the other undivided moiety thereof."

As it was thus authoritatively determined by the Supreme Court that the act of Congress forfeiting the lands granted to the Atlantic and Pacific Company did not affect the grant made by the act of July 27, 1866, to the Southern Pacific Company in so far as it concerns the lands within the primary limits of that grant, I am unable to see any valid ground for holding that the forfeiture deprived the Southern Pacific Company of any indemnity lands covered by the same grant. There is but the one grant to the Southern Pacific Company made by the act of 1866, which embraces both classes of lands, that is to say, lands within its primary limits, and lands within its indemnity limits. According to the decision of the Supreme Court in *United States vs. Southern Pacific Railroad Company*, 183 U. S. 519, the act of July 7, 1866, gave to each of the railroad companies mentioned an undivided half of all the odd-numbered sections falling within the primary limits of both

grants, the half so granted to the Atlantic and Pacific Company afterwards reverting to the United States by virtue of the act of forfeiture. It is quite true, as suggested by counsel for the complainant, that had the grant to the Atlantic and Pacific Company not been forfeited, it would have continued to hold its interest in the odd-numbered sections within its primary limits, and that, in that event, none of such odd-numbered sections would have been subject to selection by the Southern Pacific Company as indemnity lands; but, according to the ruling of the Supreme Court in 183 U. S. 519, that would only have been so for the reason that, in the event supposed, such odd-numbered sections would not have been public lands.

Applying the decision of the Supreme Court in the case last cited to the admitted facts in the present case, it seems to me to result, necessarily, that, except as to those of the lands in controversy as were covered by the final decree entered in the case numbered in this Court 184, and affirmed by the Supreme Court in 168 U. S. 1, there must be judgment for the defendants; for holding, as the Supreme Court did in the case reported in 183 U. S. 519, that the act forfeiting the grant to the Atlantic and Pacific Company by the act of July 27, 1866, in so far as concerns the lands within the primary limits of that grant, I do not think I would be justified in holding that the

forfeiture deprived that company of any indemnity lands covered by the same grant, not included in any judgment heretofore entered.

I see nothing in the decision of the Supreme Court in the case of *Southern Pacific Railroad Company vs. United States*, 189 U. S. 447, in conflict with this ruling. In that case it was held that the rights of the Southern Pacific Company under the act of March 3, 1871 (16 Stats. 573), were subordinate to those granted by the same act to the Texas Pacific Railroad Company, the "plain intent" of which, said the Court in its opinion, was "to except from the grant to the Southern Pacific the land that in the natural course of events would be covered by the location of the" road of the Texas Pacific Company.

The Court there further expressly declared that the act of March 3, 1871, "is not governed by the ordinary rules as to contemporaneous grants. The Southern Pacific was not intended or allowed to interfere with what the Texas Pacific might take." And having there determined that in respect to lands falling within the limits of both of those grants, the Southern Pacific got no title by the act of March 3, 1871, to any of the land falling within its primary limits, it could not, for precisely the same reason, get any title to any land within the indemnity limits of that grant, for indemnity is allowed only to make

good a loss or losses sustained by the grantee within the primary limits of its grant.

Counsel for the complainant is also mistaken in saying that the precise question presented in the present case was also decided by this Court in case No. 878, 117 Fed. 544. The facts upon which that case was decided were thus stated by the Court:

“The agreed statement of facts shows that each of the separate and distinct tracts of the public lands forming the subject of the suit specifically described in exhibit “A,” annexed to the bill, and aggregating 30,067.79 acres, fell within the 30-mile limits of the Atlantic and Pacific grant; and, as I understand the evidence, none of them are embraced by the common-place limits of that grant and the grant made to the defendant railroad company by the same act of July 27, 1866, but do fall within the limits of the branch-line grant to that company. In the case of *Southern Pac. R. Co. v. U. S.*, 183 U. S. 519, 22 Sup. Ct. 154, 46 L. Ed. 307, it was held that the United States, having, by the forfeiture act of July 6, 1886, become possessed of all the rights and interest of the Atlantic and Pacific Railroad Company in the grant made to it by the act of July 27, 1866, within the limits of California, had an equal undivided moiety in all the odd-numbered sections which lie within the conflicting place limits of that grant and of that made to the defendant Southern Pacific Railroad Company

by the same act of July 27, 1866, by which the latter company acquired the other equal undivided moiety thereof. But that case left undisturbed the preceding decisions, by which it has been adjudged that none of the public lands within the 30-mile limits of the grant made by Congress on the 27th day of July, 1866, to the Atlantic and Pacific Railroad Company ever passed to the defendant Southern Pacific Railroad Company by virtue of the grant made by Congress to that company by the joint resolution of June 28, 1870, or by the act of March 3, 1871: *U. S. vs. Southern Pac. R. Co.*, 146 U. S. 570, 13 Sup. Ct. 152, 36 L. Ed. 1091; *U. S. vs. Colton Marble & Lime Co.*, 146 U. S. 615, 13 Sup. Ct. 163, 36 L. Ed. 1104; *Southern Pac. R. Co. vs. U. S.*, 168 U. S. 1, 18 Sup. Ct. 18, 42 L. Ed. 355; *U. S. vs. Southern Pac. R. Co. (C. C.)*, 86 Fed. 962; *Southern Pac. R. Co. vs. U. S.*, 38 C. C. A. 619, 98 Fed. 27."

It will be thus seen that in making that decision the Court did not have before it a case similar to that now presented, for there the lands in controversy were not within the common limits of the grants made by the act of July 27, 1866, to the Atlantic and Pacific and Southern Pacific Companies, but were within the primary limits of the Atlantic and Pacific grant, and within the limits of the branch line grant of the Southern Pacific Company, to wit, that of March 3, 1871.

There will be judgment for the complainant in respect to such of the lands here in controversy as were included in the decree entered in case No. 184 in this court, and in respect to all other lands embraced by the bill herein there will be judgment for the defendants.

A decree to that effect will be prepared and submitted to opposite counsel and then to the Court for signature.

ROSS,
Circuit Judge.

[Endorsed]: No. 1114. U. S. Circuit Court, Ninth Circuit, Southern District of California, Southern Division. The United States vs. Southern Pacific Railroad Co. et al. Opinion. Filed Jan. 21, 1907. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

*In the Circuit Court of the United States, Southern
District of California, Southern Division.*

No. 1114.

THE UNITED STATES,

Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COM-
PANY et al.,

Defendants.

Testimony.

Testimony taken on behalf of the complainant, at the United States Land Office, Los Angeles, California, on the 18th day of March, 1905, by consent of parties, before Leo Longley, Special Examiner and Commissioner of the United States Circuit Court in said cause.

In the Circuit Court of the United States, Southern District of California, Southern Division.

No. 1114.

THE UNITED STATES,

Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,

Defendants.

Report of Special Examiner in Chancery.

To the Honorable the Judges of the Circuit Court of the United States, in and for said District:

Pursuant to an order of reference made and entered in the above-entitled cause upon the 16th day of June, 1905, whereby it was ordered that the undersigned, as Special Examiner in Chancery, should take the testimony in said cause and report the same to the Court, the said Special Examiner does now report as follows:

That the complainant appeared at the United States Land Office, Los Angeles, California, on the 18th day of March, 1905, by Joseph H. Call, Esq., Special Assistant United States Attorney, and the respondents appeared by its solicitor, Wm. Singer, Jr., Esq.; and thereupon the complainant called as a witness A. J. Crookshank, who was duly sworn and examined in said cause. The deposition of said witness was reduced to writing by me, and by stipulation and agreement of the parties, contained in the record hereto attached, the reading, correcting and signing of the deposition by the witness were waived.

Complainant also introduced in evidence exhibits numbered "C," "D," "E" and "F," all of which exhibits were duly marked by the Special Examiner.

And the said record accompanying this report contains all of the evidence and exhibits introduced in said cause by the respective parties, together with the stipulations entered into, before me as Special Examiner, to the date of this report; all of which, with the exhibits introduced, is now herewith returned to the court.

Dated June 30, 1905.

LEO LONGLEY,
Special Examiner in Chancery.

*In the Circuit Court of the United States, Southern
District of California, Southern Division.*

No. 1114.

THE UNITED STATES,

Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COM-
PANY et al.,

Defendants.

Testimony taken on behalf of the complainant, at the United States Land office, Los Angeles, California, on the 18th day of March, 1905, by consent of parties, before Leo Longley, Special Examiner and Commissioner of the United States Circuit Court in said cause. Present: Joseph H. Call, Esq., Special Assistant United States Attorney, on behalf of the United States; and William Singer, Jr., Esq., on behalf of defendants.

A. J. CROOKSHANK, a witness produced on behalf of the complainant, being first duly cautioned and solemnly sworn, to testify the truth, the whole truth, and nothing but the truth, deposed as follows:

Direct Examination.

(By Mr. CALL.)

Q. 1. What is your name?

A. A. J. Crookshank.

Q. 2. What is your official position?

A. Register of the Land Office at Los Angeles, California.

Q. 3. United States Land Office?

A. United States Land Office.

Q. 4. How long have you been such Register of Land Office?

A. Since about May 1st, 1898.

It is stipulated and agreed that no patent has issued to the defendant Southern Pacific Railroad Company for any lands described in Exhibit "B" to complainant's bill of complaint herein; but all of said lands other than such thereof as to which the said bill has been dismissed, are included by indemnity selections of the defendant Southern Pacific Railroad Company, under its land grant by the Act of Congress of July 27th, 1866, in lists now pending before the Department of Interior—which selection lists are cor-

(Testimony of A. J. Crookshank.)

rectly shown on Exhibit "B" to plaintiff's bill of complaint.

Q. 5. When selections are made by the Southern Pacific Railroad Company as indemnity, what action is taken by this office upon such selections?

A. They are noted on the records of the office.

Q. 6. And at that time is it the practice for this office to recommend rejection or approval of such selections?

A. It is.

Q. 7. What is the effect of noting upon the records of this office of applications to select indemnity lands under railroad grants?

A. It withdraws them from entry, preserves the lands, reserves the lands, pending the final decision or approval of the list.

Q. 8. Exhibit "B" to complainant's bill of complaint contains, as has been stipulated, a list of selections made by the Southern Pacific Railroad Company on different dates of lands involved in this suit, selected as indemnity under its grant of July 27, 1866, and of lands falling within the granted or placed limits of the forfeited grant to the Atlantic and Pacific Railroad Company. Now, that exhibit shows that such selections were made at various dates running through a period of eight or ten years. Now, I wish you would state fully what is the effect

(Testimony of A. J. Crookshank.)

of such selections down to this time upon the lands so selected.

A. I have not examined the papers you refer to. But, generally speaking, the selection of the land by the railroad company reserves the land from further disposition until that selection is finally disposed of.

Q. 9. Assuming, then, that the selections have all been made as shown upon Exhibit "B," all those lands have been reserved from location and entry and settlement since the time those selections were made. Is that so?

A. Well, just during the pendency of each selection.

Q. 10. Yes. Well, we have stipulated that they still remain not finally determined.

A. Yes, but if there were several selections, why, the land might not be reserved from entry between the dates of the two selections if they didn't overlap.

Q. 11. Well, they would remain reserved until the selection was finally rejected by the Secretary of the Interior, would they not?

A. Certainly. Yes, sir.

Q. 12. There is before the court in this case for judicial notice, under stipulation of counsel, all of the published letters and decisions of the Secretary of the Interior and Commissioner of the General Land Office. I would now call your attention to the

(Testimony of A. J. Crookshank.)

letter and order of the Commissioner of the General Land Office dated April 13, 1898, which is published in volume 26 of the Decisions of the Interior Department, at pages 697, 698 and 699, and which letter and order of the Commissioner are based upon decisions of the Secretary of the Interior dated January 18 and 28, 1898, published in volume 26, Land Decisions, at pages 48 and 49, in and by which letter or order the Commissioner of the General Land Office, under the decision of the Supreme Court of the United States in the case of United States vs. Southern Pacific Railroad Company, number 184, decided by the Supreme Court, according to this decision reported in 168 U. S., page 1, ordered all of the lands within the indemnity limits of the Southern Pacific grant of July 27, 1866, overlapped by the granted limits of the Atlantic and Pacific grant, so far as described in Exhibits "A" and "B" to this bill, to be restored to entry, and by the same letter ordered cancellation of all indemnity selections theretofore made by said railroad company of said lands. I now wish you would state if you are familiar with that letter and decision and if it is on file in this office.

Mr. SINGER.—I object to the form of the question, in so far as it is a statement of counsel's con-

(Testimony of A. J. Crookshank.)

struction of the decision referred to, and because the decision itself as reported is the proper evidence.

A. I remember the decision.

Q. 13. (By Mr. CALL.) Did you receive that in due course at this office? A. I did.

Q. 14. State what action was taken upon that letter?

A. An order was published ordering the lands to be restored to entry on September 6. I had better look up the date. I am not sure, but I think it was September 6, 1898.

Q. 15. Well, you are sure it was in the fall of 1898?

A. It was in the fall of 1898. I can get the exact date, but I don't remember it. If you will excuse me a moment, I will get it for you. (Refers to order.) It is the 6th day of September, 1898.

Q. 16. Were you the Register of the Land Office on September 6, 1898, when these lands were so restored? A. I was.

Mr. CALL.—I desire to offer in evidence at this time the said decision and letter of the Commissioner of the General Land Office, dated April 15, 1898, which is dated in the published reports as of April 13, 1898, reported in volume 26, 6 Land Decisions, at pages 697, 698 and 699, as follows:

(Testimony of A. J. Crookshank.)

RAILROAD LANDS—ORDER OF RESTORATION—INSTRUCTIONS.

Commissioner Herman to the Register and Receiver at Los Angeles, California, April 13, 1898.

“The Supreme Court of the United States has finally decided that the lands lying within the overlapping limits of the grant by act of Congress of March 3, 1871 (16 Stat. 573) to the Southern Pacific Railroad Company, branch line, and the forfeited portion of the grant by act of July 27, 1866 (14 Stat. 592) to the Atlantic and Pacific Railroad Company, are public lands and that the Southern Pacific Railroad Company has no right therein under said grant of 1871, *Southern Pacific Railroad Co. et al. vs. United States* (168 U. S. 1); and the Secretary of the Interior by letters of January 18 and 28, 1898 (26 L. D. 48 and 97), has directed that the restoration to entry of the lands which had been directed to be restored by departmental letter of July 15, 1893, but was suspended by departmental letter of November 8, 1893, because of the pendency of the suit now decided, be proceeded with, certain lands being excepted.

Therefore, in order to carry the restoration into effect, you will cause to be published for the period of thirty (30) days in some newspaper of general circulation in your district, and in the vicinity of the

(Testimony of A. J. Crookshank.)

lands, a notice that all lands lying within the overlapping limits of the Atlantic and Pacific Company's grant by act of July 27, 1866, and the Southern Pacific Branch Line grant by act of March 3, 1871, and not within the twenty mile primary limits of the grant by the former act to the Southern Pacific Company for its main line, heretofore reserved from entry for the Southern Pacific Company, are restored to the public domain, with the exceptions and additions to be noted further on, and will be subject to entry on a day to be fixed by the notice which shall not be less than thirty (30) days from the date of the first publication thereof.

To the end that complications that might arise from the former practice of suspending applications for these lands may be avoided and the rightful claimants be enabled to acquire title with as little delay as possible, I have to direct that there be inserted in the notice of restoration, a notice to all prior applicants, whatever the character of the claim asserted, that their applications confer no rights upon them and that upon the day set for the restoration the lands will be opened to entry and disposal without regard to such applications, which shall be held by the notice to be rejected.

That all said applicants, however, may have ample opportunity to present new applications when the

(Testimony of A. J. Crookshank.)

lands may be opened to entry, I enclose herewith a list of such of them as have applications pending in this office, giving their postoffice addresses, and have to direct that you at once specially notify said parties and any others shown by your records to have applications pending, of the rejection thereof, of the date of the restoration and of the necessity of presenting new applications for the protection of their rights.

The exceptions from the restoration are the lands involved in the suit recently decided by the Supreme Court (168 U. S. 1), which were claimed by defendants other than the Southern Pacific Railroad Company, and the trustees in the mortgage executed by that company, a list of which is enclosed marked "A," and the lands lying within the San Gabriel timber land reserve. While the lands within said timber reserve are generally excluded from the restoration, any claims therein initiated prior to its creation, which was by proclamation of the President of December 20, 1892, will upon presentation receive due consideration.

The south half of sections 7, 9 and 11 and all of sections 13, 15 and 17 in township 7 north, ranges 9, 10, 11, 12 and 13, west, though within the twenty-mile primray limits of the Southern Pacific main line

(Testimony of A. J. Crookshank.)

grant, were involved in the suit aforesaid and are also to be included in the restoration.

I transmit a diagram showing the limits of the said grants as they overlap the lands to be restored, and in explanation thereof will say that under the decision of the Court the restoration will embrace all the public lands within the thirty (30) mile limits of the forfeited Atlantic and Pacific grant to the extent it is overlapped by the Southern Pacific branch line grant (both twenty and thirty mile limits) outside the twenty mile primary limits of the Southern Pacific main line grant, and also the tracts above described within said latter limits as being involved in the suit recently decided, with the exceptions noted.

The lands outside the primary limits of the Southern Pacific main line grant, and within the limits of its branch line grant, are of four classes, as follows: Lands within the common granted limits of the Atlantic and Pacific grant and the Southern Pacific grant of 1871; lands within the granted limits of said Southern Pacific grant and the indemnity limits of the Atlantic and Pacific grant; lands within the granted limits of the Atlantic and Pacific grant and within the indemnity limits of the Southern Pacific grant, and lands within the common indemnity

(Testimony of A. J. Crookshank.)

limits of both grants. The San Gabriel reservation is noted on the diagram and colored pink.

All applications to select and all selections by the Southern Pacific Railroad Company on account of its branch line of the lands to be restored, are rejected and canceled, respectively, and you will so note upon your records.

Any entries of lands which may have been allowed, will be permitted to stand, and if no superior adverse claims to the tracts covered by them are presented they may be perfected. In all cases of conflicting claims you will proceed in accordance with the rules of practice in similar cases.

You will promptly forward a copy of the newspaper containing the first notice of the restoration for the information of this office.

The receiver as disbursing officer, will pay the cost of publication and forward a copy of the notice with proof of publication as his voucher for the disbursement.

Approved, May 3, 1898.

C. N. BLISS,

Secretary.

Q. 17. On the date and hour of restoration of said lands on September 6, 1898, was there an unusual number of applications made to enter the lands em-

(Testimony of A. J. Crookshank.)

braced in said order under the land laws of the United States? A. There were.

Q. 18. How were those attempts to enter received by this office? In what order?

A. In the order received.

Q. 19. According to the best of your recollection, how many applicants were there on that date to make entry on such lands?

A. I think we had some five or six hundred.

Q. 20. On that date and hour, did the Southern Pacific Railroad Company make any effort to re-select such lands? A. It did.

Q. 21. By what agent?

A. By Mr. Jerome Madden, its land agent.

Q. 22. In what position in the line or application did he stand? A. Number one.

Q. 23. And what did he do then, at that time, as the first applicant to apply for such lands?

A. He presented certain lists. I don't remember the numbers now.

Q. 24. What action has this office taken upon application of the Southern Pacific Railroad Company to select as indemnity under its main line grant of 1866, lands within the granted or placed limits of the Atlantic and Pacific grant?

A. Rejected them.

(Testimony of A. J. Crookshank.)

Q. 25. Were all such applications rejected by this office?

A. They were. Excuse me. You refer to the applications made at that date, don't you?

Q. 26. Yes, or any subsequent date.

A. Of course I don't remember just what action has been taken since. I know of selections. But those particular selections referred to were rejected, and my impression is that all which have been made since have been rejected, though I could not state without looking up the records.

Q. 27. Well, the action of this office, when such applications were first made, was to reject them, was it?

A. Yes, sir.

Q. 28. What action was then taken by the Southern Pacific Railroad Company?

A. It appealed.

Q. 29. To what officer?

A. To the Honorable Commissioner of the General Land Office.

Q. 30. And can you state what action he took upon such applications?

A. The rejection was sustained. The decision may have been modified, but the lists were rejected.

Q. 31. What action was then taken?

A. Appealed to the Secretary of the Interior.

(Testimony of A. J. Crookshank.)

Q. 32. By the Southern Pacific Railroad Company? A. Yes, sir.

Q. 33. And what action has been taken by that officer upon such applications?

A. No action that I remember. I think their lists are still pending.

Q. 34. So that the practical effect of these selections by appealing from one officer to the other has been to hold these lands in reserve during all these years? A. Yes, sir.

Mr. CALL.—I now desire to offer in evidence a certified copy of a portion of the record in the case of United States vs. Southern Pacific Railroad Company, Consolidated numbers 67, 68 and 69 on the docket of the United States Circuit Court, Southern District of California, and ask that the same be marked Complainant's Exhibit "C."

Mr. SINGER.—I object to the admission of the document last offered, as irrelevant and immaterial to any issues presented in the case, and uselessly encumbering the record.

The document last offered is marked "Complainant's Exhibit 'C.'—L. L."

Mr. CALL.—I also offer in evidence a certified copy of a portion of the record in the case of United States vs. Southern Pacific Railroad Company, num-

(Testimony of A. J. Crookshank.)

bered 184 on the docket of the United States Circuit Court, Southern District of California, and ask that it be marked Complainant's Exhibit "D."

Mr. SINGER.—Same objection.

The document last offered is marked "Complainant's Exhibit 'D.'—L. L."

Mr. CALL.—I also offer in evidence a certified copy of a portion of the record in the case of United States vs. Southern Pacific Railroad Company et al., numbered 600 on the docket of the United States Circuit Court, Southern District of California, and ask that the same be marked Complainant's Exhibit "E."

Mr. SINGER.—Same objection.

Document last offered is marked "Complainant's Exhibit 'E.'—L. L."

Mr. CALL.—I also offer in evidence a certified copy of a diagram from the General Land Office, showing the lines of location of the railroads of the Southern Pacific Railroad Company under its grants of July 27, 1866, and March 3, 1871, and of the Atlantic and Pacific Railroad Company under the grant of July 27, 1866, and showing also the established twenty and thirty mile limits, and ask that the same be marked Complainant's Exhibit "F."

(Testimony of A. J. Crookshank.)

Diagram last offered is marked "Complainant's Exhibit 'F.'—L. L."

Mr. CALL.—That is all.

Cross-examination.

(By Mr. SINGER.)

Q. 35. The indemnity selection lists presented by the Southern Pacific Railroad Company are in duplicate, are they not?

A. They are.

Q. 36. One copy or original being for the files of the local Land Office, and another being for the files of the Commissioner of the General Land Office.

A. Yes, sir.

Q. 37. Your action in approving or rejecting each list is endorsed upon your copy and the Commissioner's copy, is it not? A. It is.

Q. 38. If your action is rejected and no appeal is taken by the railroad company, the presentation of the selection lists in no wise affects the status of the land after lapse of thirty days appeal time, does it?

A. It does not.

Q. 39. If your action is approval, the Commissioner's copy with the approval endorsed is forwarded to his office, is it not? A. It is.

Q. 40. If he rejects the list notwithstanding your approval, the selection list in no wise affects the

(Testimony of A. J. Crookshank.)

status of the land after the lapse of appeal time and no appeal taken, does it? A. It does not.

Q. 41. If appeal is taken from rejection order of the list by the Southern Pacific Railroad Company and the Secretary of Interior confirms the rejection of the Commissioner, the status of the land is no longer affected by presentation of the list, is it?

A. It is not.

Q. 42. Do you remember whether any of the applicants to file for lands on the date in September, 1898, to which you referred applied to select any of the lands in this suit?

A. I am quite sure so. No, excuse me. In this suit, I don't know it—this suit. I don't know what lands are included in this suit. My answer was to the lists selected on September 6th, 1898.

Q. 43. I understand. Do you remember whether any applications were then or thereafter made to file settlement claims for lands within the indemnity limits of the Southern Pacific Railroad Company's grant by the Act of July 27th, 1866, within the overlap of the Atlantic and Pacific primary limits?

A. I think there were, though I could not answer positively without looking at the records.

Q. 44. These selection lists are accompanied by payment or tender of fees and charges, are they not?

A. They are.

(Testimony of A. J. Crookshank.)

Q. 45. And they are in form and contain the affidavits and certificates required by the rules and regulations of the Interior Department governing such selections? A. They are.

Mr. SINGER.—That is all.

Mr. CALL.—That is all. Will you waive the reading, correcting and signing by Mr. Crookshank of his deposition?

Mr. SINGER.—Yes.

[Endorsed]: Filed Jul. 1, 1905. Wm. M. Van Dyke, Clerk. Chas N. Williams, Deputy.

Complainant's Exhibit "C."

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

THE UNITED STATES OF AMERICA,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al.

Nos. 67, 68 and 69.

CONSOLIDATED BY ORDER OF COURT.

Second Amended Bill of Complaint.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

Nos. 67, 68 and 69—Consolidated by Order of Court.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, THE SOUTHERN PACIFIC COMPANY OF KENTUCKY, LEWIS H. BIXBY, H. J. PARKS, CLARA E. CUMBERLAND, THOMAS S. OLDHAM, O. MORGAN, THE POMONA LAND AND WATER COMPANY, L. L. BRADBURY, H. M. CRAMPTON, CARLTON SEAVES, STODDARD JESS, ELIAS FINK, CHARLES N. PECK, S. W. MOORE, GEORGE D. RIPLEY, C. C. JOHNSON, WILLIAM S. HENDERSON, FRANK JOHNSON, GEORGE RHORES, CASSIE L. FOSS and JOSEPH HINKELL,

Defendants.

To the Judges of the Circuit Court of the United States for the Southern District of California:

The United States of America, by the Attorney General thereof, brings this, its second amended bill,

against the Southern Pacific Railroad Company, a corporation organized and existing as hereinafter set forth; The Pomona Land and Water Company, a corporation organized and existing under the laws of California; The Southern Pacific Company of Kentucky, a corporation organized and existing under the laws of Kentucky, and owning and operating a railroad in this judicial district; Lewis H. Bixby, H. J. Parks, Clara E. Cumberland, Thomas S. Oldham, O. Morgan, L. L. Bradbury, H. M. Crampton, Carlton Seaves, Stoddard Jess; Elias Fink, Charles N. Peck, S. W. Moore, George D. Ripley, C. C. Johnson, William S. Henderson, Frank Johnson, George Rhores, Cassie L. Foss and Joseph Hinkell, each a resident and a citizen of the State of California.

And thereupon your orator complains and alleges: That on December 2, 1865, a corporation was organized under the laws of the State of California by the name and style of the Southern Pacific Railroad Company, and under a general law thereof approved May 20, 1861, entitled "An Act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto, with the corporate name of the Southern Pacific Railroad Company." Said Act is printed in the Statutes of California, 1861, at page 607, and sections 2, 3, 17 (divisions first, second and seventh), 18, 40 and 43, are as follows, to wit: Chapter DXXXII.

“An Act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto.”

“The people of the State of California, represented in Senate and Assembly, do enact as follows:

“Section 1.—

“Sec. 2. The said articles of association shall set forth the name of the incorporation, the number of years the same is to continue in existence, which shall not exceed fifty years, the amount of capital stock of the company, which shall be divided into be the actual contemplated cost of constructing the shares of one hundred dollars each, and which shall road, together with the cost of the right of way, motive power, and every other appurtenance and thing for the completion and running of said road, as nearly as can be estimated by competent engineers, the names and number of the Directors to manage the affairs of the company, who shall hold their office until others are elected, as shall be provided by the by-laws of the company, the place from and to which the proposed road is to be constructed, and the counties into and through which it is intended to pass, and its length as near as may be. Each subscriber to such articles of association shall personally subscribe thereto his name, place of residence, and the number of shares of stock taken by him in such company; provided, that in case a person de-

sirous of becoming a subscriber, but compelled to be absent from the State at the time of subscribing to such articles of association, he having paid the ten per cent required by law upon his subscription, may sign the same by written proxy, or power of attorney, to that effect; and there shall be endorsed, or attached to the said articles so subscribed an affidavit made by any three of the Directors named therein, setting forth in substance that said amount of stock has been subscribed, and that ten per cent in cash thereon has actually and in good faith been paid in as aforesaid, and that the subscribers to said articles are all known by one, or the other, of the said three Directors to be subscribers thereto, and to be the persons so represented."

"Sec. 3. Articles of association formed in pursuance of the provisions of the foregoing sections shall be filed in the office of the Secretary of State, and thereupon the persons who have, or may, subscribed the same, and all persons who may, from time to time, become stockholders in such company, shall be a body politic and corporate, by the name stated in such articles of association, and shall be capable in law to make all contracts, acquire real and personal property, purchase, hold, convey any and all real and personal property whatever necessary for the construction, completion, and maintenance of such railroad, and for the erection of all

necessary buildings and yards, or places and appurtenances for the use of the same, and be capable of suing and being sued, and have a common, or corporate, seal, and make and alter the same at pleasure, and generally to possess all the powers and privileges for the purpose of carrying on the business of the corporation, that private individuals and natural persons now enjoy. A copy of any articles of association filed in pursuance of this Act, and certified to be a copy by the Secretary of State, or his Deputy, shall, in all courts and places, be presumptive evidence of the incorporation of such company, and of the facts stated therein; and such a copy, so certified, shall be kept in the office of the Secretary of the corporation, subject to examination during office hours by any person."

"Sec. 17. Every railroad corporation shall have power:—

First:—To cause such examinations and surveys for the proposed railroad to be made as may be necessary to the selection of the most advantageous route for the railroad, and for such purpose, by their officers, agents and employees, to enter upon the lands, or waters, of any person, but subject to responsibility for all damages which they shall do thereto.

Second:—To receive, hold, take and convey, by deed, or otherwise, the same as a natural person

might, or could, do, such voluntary grants, and donations of real estate, and other property of every description, as shall be made to it, to aid and encourage the construction, maintenance and accommodation of such railroad.

Seventh:—To purchase lands, timber, stone, gravel, or other materials to be used in the construction and maintenance of its road, to take them in the manner provided by this Act; may change the line of its road, in whole, or in part, whenever a majority of the Directors shall so determine, as is provided hereinafter; but no such change shall vary the general route of such road, as contemplated in the articles of association of such company.”

“Sec. 18. If at any time after the location of the line of such railroad, in whole, or in part, and the filing of the map thereof, as provided by this Act, it shall appear to the Directors of such company that the same may be improved, such Directors may, from time to time, alter, or change, the line, in any manner they may think proper, and cause a new map to be filed in the office where the map showing the first location is filed, and may thereupon take possession of the land embraced in such new location, that may be required for the construction and maintenance of such new road on such new line, either by agreement with the owner, or owners, of such lands, or by such proceedings as are authorized under the

provisions of this Act, and use and enjoy the same in place of the line for which the new is substituted; but nothing in this Act shall be so construed as to confer any powers on such companies to so change their road as to avoid any point named in their articles of association, except as provided in section 17, subdivision 7, of this Act."

"Sec. 40. It shall be lawful for two, or more, railroad companies to amalgamate and consolidate their capital stock, debts, property, assets, and franchises in such manner as may be agreed upon by the Board of Directors of such companies so desiring to amalgamate and consolidate their interests; but no such amalgamation, or consolidation, shall take place without the written consent of three-fourths of the value of all stockholders in interest of each company, and no such amalgamation, or consolidation, shall, in any way, relieve such companies, or the stockholders thereof, from any and all just liabilities; and in case of such amalgamation, or consolidation, due notice of the same shall be given, by advertising, for one month, in at least one newspaper in each county, if there shall be one published therein, into, or through, which such roads shall run, and also for the same length of time, in one paper published in Sacramento, and two papers published in San Francisco, and when the consolidation and amalgamation is completed, a copy of the new articles

of association shall be filed in the office of the Secretary of State. It shall be the duty of the railroad company to make and maintain a good and sufficient fence on either, or both, sides of their property; and in case any company do not make and maintain such fence, if their engine, or cars, shall kill, maim, or destroy, any cattle or other domestic animals, when they stray upon their line of road, where it passes through, or alongside of, the property of the owner thereof, they shall pay to the owner, or owners, of such cattle, or other domestic animals, a fair market price for the same, unless the owner, or owners, of the animal, or animals, so killed, maimed or destroyed, shall be negligent, or at fault. In any case where the railroad company have heretofore, or may hereafter, pay to the owner, or owners, of the land through which, or alongside of which their road is, or may be, located, an agreed price for making and maintaining such fence, or whenever the costs of such fence have been, or may be, included in the award of damages allowed and paid for the right of way for such railroad, such company shall be entirely relieved and exonerated from all claims, or awards, of damages arising out of the killing, or maiming, any animals as aforesaid, in favor of all persons, or their successors, or assigns, who shall thus fail to construct and maintain such fence. And the owner, or owners, of such animals shall become

responsible to the railroad company for any damage, or loss, which may accrue to such company, from such animals being upon their railroad track, by reason of the non-construction of such fence by said owner, unless it can be proven that such loss, or damage, accrued by reason of the negligence of said company, its officers, agents, or employees."

"Sec. 43. Every railroad company in this State shall, within a reasonable time after their road shall be finally located, cause to be made a map and profile thereof, and the land taken and obtained for the use thereof, and the boundaries of the several counties through which said road may run, and file the same in the office of the Secretary of State; and also, like maps of the parts thereof located in different counties, and file the same in the office of the Clerk of the county in which said parts of said road shall be, there to remain as of record forever. The said maps and profiles shall be certified by the Chief Engineer, the acting President, and Secretary of such company; and copies of the same so certified and filed as aforesaid, shall be kept in the office of the Secretary of the company, subject to examination by all parties interested."

Said corporation was formed for the purpose and with the corporate power, as stated in its articles of incorporation, of constructing, owning and maintaining a railroad from some point on the Bay of San

Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego, to the town of San Diego, in said State; thence eastward, through said County of San Diego, to the eastern line of the State of California; there to connect with a contemplated railroad from the eastern line of the State of California to the Mississippi River.

Your orator further shows that on October 11th, 1870, under and by virtue of the said general laws of the State of California, authorizing two or more railroad companies to consolidate and amalgamate their capital stock, debts, property, assets and franchises, said Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, a railroad corporation then organized and existing under the laws of California, and the Santa Clara and Pajaro Valley Railroad Company, also a railroad corporation then organized and existing under the laws of California, did pretend to consolidate and amalgamate their capital stock, debts, property, assets and franchises, making a different capital, issuing new stock and creating a new and different corporation under the name and style of the Southern Pacific Railroad Company.

On the 27th day of July, 1866, Congress passed an Act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from

the States of Missouri and Arkansas to the Pacific Coast by the Southern Route," which was approved on that day. The said Act is printed in the 14th volume of the United States Statutes at Large, at page 292; and sections 3, 4, 6, 8, 9, 11, 12, 13, 17, 18 and 20 of said Act are hereinafter set forth.

On the 24th day of November, 1866, the Board of Directors of the said Southern Pacific Railroad Company, at a meeting held in the City of San Francisco, in the State of California, on that day, passed a resolution reciting the Act last above entitled, and resolved, to accept the same and the terms, conditions and impositions contained in said Act, and accordingly, on the 30th day of November, 1866, the secretary of said company transmitted to the Secretary of the Interior, a certified copy of the said resolution of the Board of Directors, under the seal of the Company, accepting the terms and conditions of said Act of Congress of July 27, 1866, which certified copy was on the 27th day of December, 1866, duly filed with the Secretary of the Interior.

That on March 1, 1870, the Legislature of California passed an Act, entitled "An Act relating to Certificates of Incorporation," which Act was approved on said date; that said Act is in the words and phrases as follows, to wit:

"Section 1. Any corporation now or hereafter organized under the laws of this State, may amend

its articles of association, or certificate of incorporation, by a majority vote of the Board of Directors, or Trustees, and by vote or written assent of the stockholders representing at least two-thirds of the capital stock of such corporation; and a copy of the said articles of association or certificate of incorporation, as thus amended, duly certified to be correct by the President and Secretary of the Board of Directors, or Trustees of such corporation, shall be filed in the same office, or offices, where the original articles or certificate are required by law to be filed; and from the time of filing such copy of the amended article, or certificate, such corporation shall have the same powers, and it and the stockholders thereof shall be thereafter subject to the same liabilities as if such amendment had been embraced in the original articles or certificate; provided, that the time of the existence of such corporation shall not be thereby extended beyond the time fixed in the original articles or certificate; and provided further, that such original and amended articles or certificate shall, together, contain all the matters and things required by the law, under which the original articles of association or certificate of incorporation were executed and filed; and provided, further, that nothing herein contained shall be construed to cure or amend any defect existing in any original certificate of incorporation heretofore filed, by

reason of the failure of such certificate to set forth the matters required by law to make the same valid as a certificate of incorporation at the time of the filing thereof; also provided, that unless the vote or written assent of all the stockholders has been obtained, then a notice of the intention to make such amendment shall first be advertised for sixty days, in some newspaper published in the town or county in which the principal place of business of said Company is located; and the written protest of any one of said stockholders, or his duly authorized agent or attorney, whose assent has not been obtained, filed with the secretary of the said Company, shall, unless withdrawn, be effectual to prevent the adoption of such amendment; provided, that nothing in this Act shall be construed to authorize any corporation to diminish its capital stock."

"Section 2. This Act shall take effect and be in force from and after its passage."

On April 4th, 1870, the Legislature of California passed an Act as follows: "Whereas, by the provisions of a certain Act of Congress of the United States of America, entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from San Francisco to the eastern line of the State of California,' approved July 27, 1866, certain grants were made to and certain rights, privileges, powers and authority were vested in and

conferred upon the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the State of California; therefore, to enable the said Company to more fully and completely comply with, and perform the requirements, provisions and conditions of the said Act of Congress, and all other Acts of Congress now in force, or which may hereafter be enacted, the State of California hereby consents to said Act; and the said Company, its successors and assigns are hereby authorized and empowered to change the line of its railroad so as to reach the eastern boundary line of the State of California by such route as the Company shall determine to be the most practicable, and to file new and amendatory articles of association, and the right, power and privileges hereby granted to, conferred upon, and vested in them, to construct, maintain and operate by steam or other power the said railroad and telegraph line mentioned in said Act of Congress, hereby confirming to and vesting in the said Company, its successors and assigns, all the rights, privileges and franchises, power and authority conferred upon, granted to, or vested in said Company by the said Acts of Congress, and any Act of Congress which may be hereafter enacted "

That on April 15, 1871, in pursuance of the said general Acts of the Legislature of California, approved March 1, 1870, the said Southern Pacific

Railroad Company, filed its amended articles of association, in the same office where the originals are required by law to be filed, which articles are as follows:

“Whereas, by an Act of the Legislature of the State of California, entitled ‘An Act relating to certificates of incorporation,’ approved March 1, 1870, any corporation then organized, or thereafter to be organized under the laws of the State of California, is authorized and empowered to amend its articles of association, or certificate of incorporation, by a majority vote of the Board of Directors or Trustees, and by a vote or written assent of the stockholders representing, at least, two-thirds of the capital stock of such corporation.

“And whereas, by a certain other Act of the Legislature of the State of California, entitled ‘An Act to aid in giving effect to an Act of Congress, relating to the Southern Pacific Railroad Company,’ approved April the 4th, 1870, to enable the said Company to more fully and completely comply with, and perform the provisions, requirements and conditions of an Act of Congress of the United States of America, entitled ‘An Act granting lands to aid in the construction of a railroad and telegraph line from San Francisco to the eastern line of the State of California,’ approved July 27, 1866, and of all other Acts of Congress then in force, or which

might thereafter be enacted, the said Southern Pacific Railroad Company, its successors and assigns, were authorized and empowered to change the line of its railroad so as to reach the eastern boundary line of the State of California, by such route as said Company might determine to be the most practicable, and to file new and amendatory articles of Association.

“And whereas, by an Act of Congress of the United States of America, entitled ‘An Act to incorporate Texas Pacific Railroad Company and aid in the construction of its road, and for other purposes,’ approved March the 3d, 1871.”

“The said Southern Pacific Railroad Company was authorized subject to the laws of California, to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles to the Texas Pacific Railroad, at or near the Colorado River, with the same grants, rights and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company by an Act of Congress entitled, ‘An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast.’ approved July 27, 1866.”

“And whereas, said Southern Pacific Railroad Company desires to secure to itself the grants, rights

and privileges conferred upon it by said Acts of Congress of the United States, and to that end to amend and alter its articles of associations, as provided in the foregoing acts of the Legislature of the State of California, so as to include in its line of railroad and telegraph the line or route designated in the aforesaid Act of Congress of March 3, 1871, to wit: The line from a point at, or near, Tehachdepi Pass, by way of Los Angeles to the Texas Pacific Railroad, at or near the Colorado River."

"And whereas, on the 11th day of April, 1871, at a meeting of the Board of Directors of said Company, held at San Francisco, the principal place of business of said company, it was determined by a unanimous vote of said board, that the articles of association of said company be amended as aforesaid."

"And whereas, at the same time and place, at a meeting of the stockholders of said company, at which stockholders of said company holding more than two-thirds of the capital stock of said company were present, and did vote unanimously in favor of amending the articles of association of said company as aforesaid, and did also unanimously vote to increase the capital stock of said company to the sum of seventy millions of dollars, to meet the increased cost of the construction and equipment of said railroad.

“Now, therefore, the Board of Directors of said Southern Pacific Railroad do order and direct that the articles of association of said company be amended so as to read as follows:

“ARTICLES OF ASSOCIATION, AMALGAMATION AND CONSOLIDATION.

“Made and executed on this the 11th day of October, A. D. 1870, by and between the San Francisco and San Jose Railroad Company, of the first part, the Santa Clara and Pajaro Valley Railroad Company, of the second part, the Southern Pacific Railroad Company, of the third part, and the California Southern Railroad Company of the fourth part, witnesseth:

That whereas, the said party of the first part was heretofore, to wit, on the 18th day of August, 1860, duly incorporated and organized under the laws of the State of California, for the purpose of constructing, owning, maintaining and operating a railroad from the city of San Francisco, in the county of San Francisco, in said State, through said county and the counties of San Mateo and Santa Clara, to the city of San Jose, in said last-named county, a distance of forty-eight miles.”

“And whereas, the said party of the second part was heretofore, to wit, on the 2d day of January, 1868, duly incorporated and organized under the laws of said State, for the purpose of constructing,

owning, maintaining and operating a railroad from a point at or near the city of San Jose, in the county of Santa Clara and State aforesaid, connecting at said point with the railroad of the said party of the first part, and to pass thence to a point at or near the town of New Gilroy, in the same county, a distance of thirty miles."

"And whereas, the said party of the third part was heretofore, to wit, on the 2d day of December, 1865, duly incorporated and organized under the laws of said State, for the purpose of constructing, owning, maintaining and operating a railroad from some point on the Bay of San Francisco, in said State, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Kern, Los Angeles and San Diego, to the town of San Diego, in said State; thence eastward through the county of San Diego to the eastern boundary line of said State, a distance of seven hundred and twenty miles, as near as may be, there to connect with a contemplated railroad from said eastern boundary line of said State to the Mississippi River, and has received large grants of land from the Government of the United States to aid in the construction and equipment of said road."

"And whereas, the said party of the fourth part was heretofore, to wit, on the 22d day of January, 1870, duly incorporated and organized under the laws

of said State, for the purpose of constructing, owning and maintaining a railroad from a point at or near the town of Gilroy, in the county of Santa Clara, in said State, and to pass through the counties of Santa Clara, Santa Cruz and Monterey, to a point at or near the town of Salinas City, in said last-named county, a distance of forty-five miles, as near as may be."

"And whereas, said parties believe a consolidation and amalgamation of their capital stocks, debts, properties, assets, roads, telegraphs, lands and franchises will be mutually advantageous."

"And whereas, more than three-fourths in value of all the stockholders in interest of each of said parties have consented, in writing, to such amalgamation and consolidation, upon the terms and conditions hereinafter set forth."

"Now, therefore, under and by virtue of the statute of the State of California, in such cases made and provided, the said parties do hereby mutually covenant and agree, each with each and all the others, to the following articles, to wit:"

"Article 1. Said parties do hereby amalgamate and consolidate themselves into a new corporation, under the name and style of the Southern Pacific Railroad Company, which new corporation shall continue in existence for the period of fifty years from the date of these articles; and they do further

consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims and demands of every kind whatsoever, as well in possession as in expectancy, at law or in equity, and do grant, convey and vest the same in said new corporation as fully as the same are now severally held and enjoyed by them, or either of them, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, encumbrances, claims and charges thereon, or in any wise affecting the same.”

“Article 2. The object and purpose of said new corporation shall be to purchase, construct, own, maintain and operate a continuous line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego, to some point on the Colorado River, in the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be; also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in

said State, passing through said county, and the counties of Santa Cruz and Monterey, to a point at or near Salinas City, in said last-named county, a distance of forty-five miles, as near as may be; also such branches to said lines as the Board of Directors of said new corporation may hereafter consider advantageous to said corporation, and direct to be established."

"Article 3. The Board of Directors of said new corporation shall consist of seven persons, and the following-named persons shall act as such directors until their successors shall have been duly elected, pursuant to the by-laws of said new corporation, hereafter to be adopted, viz.: Lloyd Tevis; Leland Stanford; Charles Crocker; C. P. Huntington; Mark Hopkins; Charles Mayne and Peter Donahue."

"Article 4. The capital stock of said new corporation shall be seventy million dollars, consisting of seven hundred thousand shares, of one hundred dollars each, that sum being the contemplated actual cost of said railroads, including telegraph lines, rolling stock, motive power, shops, depots, etc."

"Article 5. Each stockholder of each of said party shall have the same number of shares of the capital stock of the new corporation which he now owns and holds of the capital stock of his respective company, upon the same terms and conditions, and shall be entitled to receive from said new corporation certifi-

cates therefor, where the same has been fully paid up, upon the surrender of the certificates now held by him, and where the same has not been fully paid up, he shall receive such other evidence of his ownership as the Board of Directors of said new corporation shall direct, upon the surrender of such evidence of his ownership of such unpaid stock of his respective company as he may now hold."

"Article 6. Said new corporation shall assume and perform all the contracts, agreements, covenants, duties and obligations, of what kind soever, of each of said parties, and shall pay and discharge all debts, claims and demands existing against either and all of said parties; but nothing herein contained shall release the said parties, or either of them, or their stockholders, or any of them, from any of their just liabilities."

"In testimony whereof, the said Southern Pacific Railroad Company, by its Board of Directors, has caused these articles to be signed and countersigned by its president and secretary, and its corporate seal to be hereunto affixed, on this the eleventh (11) day of April, 1871.

"SOUTHERN PACIFIC RAILROAD
COMPANY,

By CHARLES CROCKER,
President.

[Seal]

J. L. WILLCUTT,
Secretary."

And your orator alleges that all the provisions of said law were fully complied with in order to give effect to said new articles of association and of said amendments.

Your orator further alleges that on the 12th day of August, 1873, under and by virtue solely of the law of the State of California of May 20, 1861, before referred to authorizing the amalgamation and consolidation of two or more railroad companies, the said Southern Pacific Railroad Company organized in 1870 as aforesaid, and the Southern Pacific Branch Railroad Company, each organized and then existing railroad companies under and by virtue of the laws of California, did pretend to amalgamate and consolidate their capital stock, debts, property, assets and franchises, creating a new capital stock and issuing new certificates of stock and canceling the old ones and creating a new and different corporation by the name and style of the Southern Pacific Railroad Company, a copy of which new articles of association and incorporation are hereto attached marked "Exhibit A B," and all the provisions of said law were fully complied with in order to give effect to said new articles of incorporation.

Your orator further shows the Court that on July 27, 1866, Congress passed an Act entitled "An Act granting lands to aid in the construction of a rail-

road and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, by the Southern route." To which said Act your orator has heretofore referred, and that secs. 3, 4, 6, 9, 11, 12, 17, 18 and 20 of said Act are as follows:

"Sec. 3. And be it further enacted, That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State; and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office, and whenever, prior to said time, any of said sections, or parts of sections, shall have been

granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers. Provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have heretofore been granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this Act. Provided, further: That the railroad company receiving the previous grant of land may assign their interest to said 'Atlantic and Pacific Railroad Company,' or may consolidate, confederate and associate with said company, upon the terms named in the first and seventeenth sections of this Act. Provided, further: That all mineral lands be, and the same are hereby, excluded from the operations of this Act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided, And further provided: That the word 'mineral,' when it occurs in this Act, shall not be held

to include iron or coal. And provided, further, that no money shall be drawn from the Treasury of the United States to aid in the construction of the said 'Atlantic and Pacific Railroad.'

"Sec. 4. And be it further enacted: That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three Commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior. and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, **substantial and workmanlike** manner, as in all other respects required by this Act, the Commissioners shall so report, under oath, to the President of the United States, and patents of land, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid, and verified by said Commissioners to the President of the United States, then patents shall be issued to said company, conveying

the additional sections of lands as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid."

"Sec. 6. And be it further enacted: That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry, or pre-emption, before or after they are surveyed, except by said company, as provided in this Act, but the provisions of the Act of September, 1841, granting pre-emption rights, and the Acts amendatory thereof, and of the Act entitled 'An Act to secure homesteads to actual settlers on the public domain,' approved May 20, 1862, shall be and the same are hereby extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company."

"Sec. 9. And be it further enacted: That the United States make the several conditional grants herein, and that the said Atlantic and Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time thereafter, the United States may do any and all

acts and things which may be needful and necessary to insure a speedy completion of the said road."

"Sec. 11. And be it further enacted: That said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval, and all other Government service, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation."

"Sec. 12. And be it further enacted: That the acceptance of the terms, conditions and impositions of this Act by the said Atlantic and Pacific Railroad Company shall be signified in writing, under the corporate seal of said company, duly executed pursuant to the direction of its Board of Directors first had and obtained, which acceptance shall be made within two years after the passage of this Act, and not afterward, and shall be deposited in the office of the Secretary of the Interior."

"Sec. 17. Be it further enacted: That the said company is authorized to accept to its own use any grant, donation, loan, power, franchise, aid or assistance which may be granted to, or conferred on, said company by the Congress of the United States, by the Legislature of any State, or by any corporation, person or persons, or by any Indian tribe or nation, through whose reservation the road herein

provided for may pass, and said corporation is authorized to hold and enjoy any such grant, donation, loan, power, franchise, aid or assistance, to its own use for the purpose aforesaid; provided, that any such grant or donation, power, aid or assistance, from any Indian tribe or nation, shall be subject to the approval of the President of the United States."

"Sec. 18. And be it further enacted: That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this Act, at such point—near the boundary line of the State of California—as they shall deem most suitable for a railroad line to San Francisco; and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided; and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

"Sec. 20. And be it further enacted: That the better to accomplish the object of this Act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times, but particularly in time

of war, the use and benefits of the same for postal, military and other purposes, Congress may, at any time having due regard for the rights of said Atlantic and Pacific Railroad Company, add to, alter, amend, or repeal this Act."

"Approved July 27, 1866."

Your orator alleges that by and pursuant to said Act of Congress, the Atlantic and Pacific Railroad Company was created and duly organized, and on November 23, 1866, within the time and in the manner provided in said Act, accepted said grant, and did designate the line of its route from Springfield, Missouri, to the Pacific by maps and plats thereof which it filed in the office of the Commissioner of the General Land Office in manner following, to wit:

On or about March 9, 1872, said company filed in the office of the Commissioner of the General Land Office maps designating the line of its route and showing the general features of the country and vicinity as follows:

First: From San Francisco to San Miguel Mission in California.

Second: Map of its route from San Miguel Mission via Santa Barbara and San Buenaventura to a point in township 2 south, range 17 west, San Bernardino Base and Meridian in California.

Third: Map of its route from said point last mentioned to a point in township 7 north, range 7 east, San Bernardino Base and Meridian in California.

Fourth: Map of its route from said point last named to the Colorado River and thereafter on or about March, 1872, said company filed in said office as aforesaid its several other maps, designating its route from said point last named to Springfield in the State of Missouri, making all together a continuous line designating its entire route and showing the general features of the country from said town of Springfield, Missouri, by way of the points named in said Act of Congress of July 27, 1866, to the Pacific at San Buenaventura, and from there to San Francisco, and in the manner provided in said act, and such designation was accepted by the United States.

Your orator alleges that said several parts of its map, filed as aforesaid, made and constituted the entire route or line of said Atlantic and Pacific Railroad Company, fully designating the whole thereof.

Your orator alleges that on March 9, 1872, and on April 22, 1872, the Secretary of the Interior and the Commissioner of the General Land Office respectively ordered all the odd sections of land within thirty miles on each side of said designated route of said Atlantic and Pacific Railroad Company reserved from sale and withdrawn.

Your orator alleges that said Atlantic and Pacific Railroad Company did construct and complete a portion of its road west of Springfield, Missouri, in the time and manner required by said act, but did

not at any time construct or complete any railroad west of the Colorado River.

Your orator further shows that by the Act of Congress approved July 6, 1886, entitled: "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for other purposes." All the lands and rights to lands in California theretofore granted and conferred upon said Atlantic and Pacific Railroad Company were forfeited, resumed and restored to entry for completion of that portion of said railroad to have been constructed in California.

Your orator alleges that the Southern Pacific Railroad Company, which is defendant herein, is not the same Southern Pacific Railroad Company which was organized and incorporated under said articles of amalgamation and consolidation, dated October 11th, 1870, and amended April 11th, 1871, as heretofore set forth, but is the now existing Southern Pacific Railroad Company created as aforesaid.

Your orator further shows the Court that, by Section 23 of an Act of Congress approved March 3, 1871, entitled "An Act to incorporate the Texas and Pacific Railroad Company, and to aid in the con-

struction of its road and for other purposes," it was provided as follows:

"That for the purpose of connecting the Texas and Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California by the Act of July 27, 1866."

"Provided, however, that this section shall in no way effect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

Said Southern Pacific Railroad Company, the corporation which existed on April 3, 1871, as heretofore shown, pretended to accept said grant on April 3, 1871, and did on that day designate the line of its said road by a plat thereof, which it filed in the office of the Commissioner of the General Land Office, and thereupon the Secretary of the Interior ordered all the public lands in odd sections within 30 miles of such route, to which no right or claim had attached, to be withdrawn from market and reserved.

And your orator alleges that the Southern Pacific Railroad Company which was organized and created

on August 12th, 1873, by the pretended articles of amalgamation and consolidation of said several railroad companies as heretofore set forth did construct and complete a railroad from Tehachapi Pass by way of Los Angeles to the Colorado River in the manner and within the time prescribed in said Act of Congress, in which the Southern Pacific Railroad Company, therein named was authorized and empowered to do; and thereafter the Commissioners appointed under said act for that purpose did unlawfully make and file their alleged acceptance of the whole of said railroad by sections. And there was not, and is not now, any railroad or part thereof constructed or completed under said act or between said points otherwise than as aforesaid.

Your orator alleges that the lands hereinafter described were acquired from Mexico by your orator in 1846 and confirmed by the Treaty of Guadalupe Hidalgo in 1848, and were then and at all times since have been public lands of the United States, not mineral, to which the United States have at all times had full title and have not been patented, reserved, sold, granted, appropriated and free from all claims and rights and occupancy, except as otherwise shown in this bill of complaint.

The said tracts being described as follows, to wit: North of base line and west of San Bernardino Meridian, Los Angeles District, township one, range

eight, ——— west half of section thirty-one, containing three hundred and twenty-one acres and sixty hundredths of an acre—all of section twenty-nine, containing six hundred and forty acres. The south half of section thirty-three, containing three hundred and twenty acres. All of section thirty-five containing six hundred and forty acres. North of base line and west of San Bernardino Principal Meridian, California township one, range nine, the north half of the southwest quarter of section twenty-seven, containing eighty acres.

Your orator further shows that the general routes of said Atlantic and Pacific Railroad Company and of said Southern Pacific Railroad Company under said Act of March 3, 1871, as said routes were located as aforesaid, cross each other in the State of California as will more particularly appear from the annexed map marked "Exhibit BB."

Your orator further shows: that on the south side of said route of the Atlantic and Pacific Railroad Company within 30 miles of said route but also within 20 miles of the pretended designated route of the Southern Pacific Railroad Company, there was not on July 27th, 1866, nor on March 12th, 1872, nor on April 3d, 1871, and is not now enough public land in the odd sections to equal in amount ten (10) alternate sections per mile of the line of road of said Atlantic and Pacific Railroad Company, within such

limits, for that prior to said date of July 27, 1866, the Mexican Government and the United States had sold, granted, reserved and otherwise disposed of so great a quantity of land in those limits.

Your orator further alleges that all of the said lands before described are situated on the south side of the said designated route of the Atlantic and Pacific Railroad Company more than 20 miles but less than 30 miles therefrom, but are less than 20 miles from the said pretended designated route of said Southern Pacific Railroad Company.

Your orator further shows that on or about March 27, 1837, Ignacio Palomares and Ricardo Vejar presented a petition to Juan B. Alvarado, Governor of Upper California under the Mexican Government, for a grant for the place known by the name of San Jose.

Thereupon said matter was properly investigated and such grant was duly made on April 15, 1837, to said Palomares and Vejar for the place called San Jose, in conformity with the plat attached to the petition and within the boundaries therein expressed.

Thereafter, and on or about December 16, 1839, one Luis Arenas and said Ignacio Palomares and Ricardo Vejar presented their petition to the Prefect of the District for a grant for the land called San Jose, ceded by the decree of April 15, 1837, and one additional league of grazing land.

Thereupon, upon investigating such matter, and on March 14, 1840, Juan B. Alvarado, then Constitutional Governor of the Department of the Californias, granted said land so petitioned for by said Arenas, Palomares and Vejar, and as fully shown by the diseno referred to in their said petition; and thereafter said grant was duly confirmed by the Department Assembly of Upper California, and judicial possession was given for said land to the said Luis Arenas, Ignacio Palomares and Ricardo Vejar; a copy of said grant and map being hereto attached marked "Exhibit CC," and a translation marked "A.C."

Your orator further shows that on or about September, 1852, Henry Dalton, Ignacio Palomares and Ricardo Vejar each severally filed his claim for confirmation of one-third of the place called San Jose, granted to them as aforesaid, with the Board of Land Commissioners, pursuant to the Act of Congress of March 3, 1851, entitled "An Act to ascertain and settle the private land claims in the State of California," and thereafter, and on or about January 31, 1854, the said Board of Land Commissioners rendered and entered its three several decrees therein, confirming to each of said claimants the land applied for and described as aforesaid.

Thereafter the United States duly appealed from each of said decrees of confirmation to the United

States District Court for the Southern District of California, which said court did, upon the trials and hearings of said appeals, and on or about December term, 1854, of said court, render and enter its separate decrees therein in each case and affirming the three said decrees of the Board of Land Commissioners, confirming to said Henry Dalton, Ricardo Vejar and Ignacio Palomares, and to each, "an equal undivided one-third part of the lands of San Jose granted by Juan B. Alvarado, Governor of California, to Ignacio Palomares and Ricardo Vejar, on April 15, 1837, and regranted by said Governor, on March 14, 1840, to said Palomares and Vejar and to Luis Arenas, as described in the grant first mentioned and the map to which the same refers and which boundaries fully appear from the act of judicial possession" described as follows: "Commencing at the foot of a black willow tree which was taken for a corner, and between the limbs of which a dry stick was placed in the form of a cross; thence westerly nine thousand seven hundred (9,700) varas to the foot of the hills called 'Las Lomas de la Puente,' taking for a landmark a large walnut tree on the slope of a small hill on the side of the road which passes from the said 'San Jose' to the Puente, making a cut (caldura) on one of the limbs with a hatchet; thence northerly ten thousand four hundred (10,400) varas to the creek (arroyo) of San Jose

opposite a high hill where a large oak was taken as a boundary in which was placed the head of a beef and some of its limbs chopped; thence easterly ten thousand six hundred (10,600) varas to the creek (arroyo) of San Antonio, taking for a landmark two young cotton woods which stand near each other, on the bark of which crosses were made; thence southerly nine thousand seven hundred (9,700) varas to the place of beginning."

Your orator further shows that each of said decrees of said District Court became final, by the dismissal of the appeal which had been taken therefrom.

Your orator further shows that the Surveyor General of the United States for California, having the power and authority under the law in that behalf to locate, to survey, to reserve, and to segregate from the public domain all Mexican grants, and sufficient lands to satisfy such grants, did in the year 1868, so locate, survey and segregate said San Jose grant, and did so locate, survey and segregate sufficient land to satisfy such grant, and included in such survey and rancho as a part thereof all the lands in suit herein as hereafter set forth.

That pursuant to such authority and under the direction of and in behalf of said Surveyor General, one George H. Thompson, Deputy United States Surveyor, did, in August, 1868, so survey, locate, and segregate such rancho, including therein the amount

of land to satisfy such rancho, and including therein as a part thereof all the lands in suit herein; and thereafter, in the same year, such survey was duly approved by said Surveyor General, and such survey was thereafter spread upon the records and plats of the General Land Office, and of the office of said Surveyor General.

Your orator alleges that a certain alleged survey was made of said San Jose Rancho by Henry Hancock, a United States Deputy Surveyor, in October and November, 1858, which was approved by the United States Surveyor General for California, J. W. Mandeville, January 4, 1860, but up to September 18, 1868, said Hancock survey had not become complete or final or effective because it had not been published nor advertised nor approved by the Commissioner of the General Land Office and was wholly inoperative as a legal survey or segregation of the land.

In the meantime and before said Hancock survey had become operative or legal the Act of Congress approved July 23, 1866, entitled "An act to quiet land titles in California," had become operative, which said act provided as follows:

Sec. 8. "That in all cases where a claim to land by virtue of a right or title derived from the Mexican or Spanish authorities has been finally confirmed and a survey and plat thereof shall not have been re-

quested within ten months—it shall be the duty of the Surveyor General of the United States for California, as soon as practicable after the expiration of ten months from the passage of this act—to cause the lines of the public surveys to be extended over such land, and he shall set off in full satisfaction of such grant and according to the lines of the public surveys the quantity of land confirmed in such final decree as nearly as can be done in accordance with such decree, and all lands not included in such grant as so set off, shall be subject to the general land laws of the United States.”

And your orator alleges that there was no such request by such claimants for a survey ever made or filed nor did they ever deposit in the United States District Court any money to pay for such survey nor for a plat thereof.

Your orator alleges that after the said Surveyor General had approved said Thompson survey of August, 1868, under said Act of July 23, 1866, and after it had become final under said act without being advertised and without the approval of the Commissioner of the General Land Office, and in the year 1869, the said Surveyor General caused said Hancock survey to be advertised as provided in the Act of Congress approved July 1, 1864, but said Hancock survey was never approved by the Commissioner of the General Land Office as required by said

Act of July 1, 1864, or any other act, and never became effective.

Your orator further shows that on or about Nov. 13, 1869, the said Surveyor General transmitted to the Commissioner of the General Land Office the said alleged Hancock survey of 1858 and said Thompson survey of 1868, together with a report in reference thereto.

Your orator alleges that on June 17, 1871, the Commissioner of the General Land Office duly considered said report and said Thompson survey and said alleged Hancock survey and did order both to be set aside and a new survey made, and up to said date of June 17, 1871, said Thompson survey was subjudice and reserved the land therein, a certified copy of said Commissioner's decision of June 17, 1871, being hereto attached marked "Exhibit B. C.," and made a part hereof, together with ten (10) papers referred to therein each marked "D."

Your orator alleges that the lands in suit herein were not embraced in said alleged Hancock survey of 1858, but were all embraced in the boundaries to the grant of Alvarado, Governor to said Palomares, Vajar and Aranas of 1840, heretofore referred to, and were claimed as a part thereof.

Your orator further shows that subsequent to June 17, 1871, the said Surveyor General for California made another survey of said San Jose Rancho and

upon which the United States did, on January 20, 1875, issue its patent therefor to said Henry Dalton; Ricardo Vejar and Ignacio Palomares as so finally surveyed, which patent was duly accepted by said claimants, and which said patent and final survey did not include any of the lands in suit herein.

Your orator further shows that on March 29, 1876, April 4, 1879, and December 27, 1883, respectively, the Commissioner of the General Land Office did, inadvertently and without any authority of law, issue three certain patents for the above described lands to the Southern Pacific Railroad Company and did procure the signature of the President of the United States thereto and of the Recorder of the General Land Office, who signed said patents without any authority of law. Copies of said pretended patents are hereto annexed and made a part hereof, being marked "Exhibits A, B, and C."

Your orator alleges upon information and belief that the defendants herein claim an interest in the lands in suit herein described in said pretended patents under and through said pretended patents, and not otherwise, but the nature and extent of such claims are unknown to your orator, and your orator asks that defendants each answer fully disclosing the nature and extent thereof.

Your orator alleges that defendants and neither of them have any title or interest in or to said lands,

legal or equitable, for that said pretended patents under which defendants solely claim title were issued inadvertently, without authority, and were at their inception and still are each void and inoperative to pass title, and that said lands were never granted to said Southern Pacific Railroad Company, defendant herein, but are still owned by the plaintiff.

Your orator further shows that the amount in controversy herein exceeds the sum or value of \$5,000 exclusive of interest and costs.

Your orator further shows that on the 16th day of August, 1887, the Secretary of the Interior of the United States, on behalf of the plaintiff and in accordance with law, did demand from the defendant, the Southern Pacific Railroad Company, a relinquishment to the United States of its claim to all the lands described in said pretended patents and a return of said patents, which the said railroad company refused and still refuses to so relinquish to the plaintiff and refused to return said patents.

Your orator refers to the several Acts of Congress relating to public lands and to private land claims, to the several Acts and Joint Resolutions of Congress relating to the Atlantic and Pacific Railroad Company, the Southern Pacific Railroad Company, the Texas and Pacific Railroad Company, and to the surveys, plats and public records of the office of the Surveyor General for California, and of the General

Land Offices, relating to the several grants to said railroad companies, and to said Mexican grant of said San Jose Rancho.

In tender consideration whereof, and for as much as the plaintiff is remediless at and by the strict rules of the common law, and can only be relieved in a Court of Equity, your orator prays that the defendants be required to bring said pretended patents into court, and that they may each be canceled by the Court, and be decreed to be null and void and of no effect.

Your orator further prays that its title to said lands described in said pretended patents may be quieted, and that the defendants, and each of them, be forever enjoined from asserting or claiming any right or title thereto adverse to the plaintiff, and such other and further relief as the Court may deem equitable in the premises.

May it please your Honors to grant unto your orator a writ of subpoena issuing out of and under the seal of this Honorable Court to be directed to the Southern Pacific Railroad Company, the Southern Pacific Company of Kentucky, Lewis H. Bixby, H. J. Parks, Clare E. Cumberland, Thomas S. Oldham, O. Morgan, The Pomona Land and Water Company, L. L. Bradbury, H. M. Crampton, Carlton Seaves, Stoddard Jess, Elias Fink, Charles N. Peck, S. W. Moore, George D. Ripley, C. C. Johnson, William S.

Henderson, Frank Johnson, George Rhores, Cassie L. Foss and Joseph Hinkell, commanding them each on a certain day and under a certain penalty therein to be inserted to be and appear before your Honors and then and there to answer the premises and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience, and your orator will ever pray.

W. H. H. MILLER,

Attorney General of the United States.

JOSEPH H. CALL,

Special Assistant United States Attorney, Southern District of California and of Counsel for Plaintiff.

[Endorsed]: Nos. 67, 68 and 69. In the Circuit Court of the United States, 9th Circuit, Southern Dist. of California. The U. S. of America vs. S. P. Railroad Co. et al. Second Amended Bill. Filed November 22d, 1889. Wm. M. Van Dyke, Clerk. Jos. H. Call, Sol. for Plff.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

Nos. 67, 68 and 69—Consolidated by Order of the
Court.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, THE SOUTHERN PACIFIC COMPANY OF KENTUCKY, LEWIS H. BIXBY, H. J. PARKS, CLARA E. CUMBERLAND, THOMAS S. OLDHAM, O. MORGAN, THE POMONA LAND AND WATER COMPANY, L. L. BRADBURY, H. M. CRAMPTON, CARLTON SEAVES, STODDARD JESS, ELIAS FINK, CHARLES N. PECK, S. W. MOORE, GEORGE D. RIPLEY, C. C. JOHNSON, WILLIAM S. HENDERSON, FRANK JOHNSON, GEORGE RHORES, CASSIE L. FOSS, and JOSEPH HINKELL,

Defendants.

**Answer of the Southern Pacific Railroad Company
in Consolidated Case No. 68.**

And now comes the Southern Pacific Railroad Company, one of the defendants in the above-entitled cause, and for answer to the second amended bill filed herein by W. H. H. Miller, Attorney General of the United States on leave of the Court on the 22d day of November, A. D. 1889, against it and the other defendants above named, and making answer to said bill and to so much thereof as it is advised is material, and now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which may be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto or to so much and such parts thereof, as this defendant is advised is material or necessary for it to make answer unto, answering says:

I.

It admits that on or about the 2d day of December, 1865, a corporation was organized under the laws of the State of California, by the name and style of the Southern Pacific Railroad Company, and under a general law of said state, approved May 20, 1861, entitled "An Act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto,"

and this defendant admits the sections two (2), three (3), seventeen (17), eighteen (18), forty (40) and forty-three (43) as set forth in said bill.

This defendant admits that the said corporation, "The Southern Pacific Railroad Company," was formed for the purpose and with the corporate powers stated in said bill.

II.

This defendant admits that on the 11th day of October, A. D. 1870, under and by virtue of the general laws of the State of California, the Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, the Santa Clara and Pajaro Valley Railroad Company (with the California Southern Railroad Company), corporations organized under the laws of California, were consolidated and amalgamated under the name of the Southern Pacific Railroad Company.

III.

This defendant admits that on the 27th day of July, 1866, Congress passed an act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," which was approved on that day, and is found in the 14th volume of the United States Statutes, p. 292, and following, and admits that the said corporation, the Southern Pacific Railroad Company, accepted the terms, condi-

tions and impositions of said act, and filed a duly certified copy of said acceptance in the office of the Secretary of the Interior, at Washington City, within the time required by law.

IV.

This defendant admits that on March 1, 1870, the Legislature of the State of California passed an act "Relating to certificates of Incorporation," which was approved on said date, and that the said Act is correctly set forth in the plaintiff's bill.

And also admits that on the 4th of April, 1870, the Legislature of the State of California, passed "An act to aid in giving effect to an act of Congress relating to the Southern Pacific Railroad Company," and that said act is correctly quoted and set forth in the plaintiff's said bill.

And the defendant also admits that the said Southern Pacific Railroad Company, in pursuance and under authority of said enactment of the Legislature of the State of California, approved March 1, 1870, filed in the office of the Secretary of State of said State of California, on the 15th day of April, A. D. 1871, amended articles of association and incorporation, which said amended articles it admits are correctly set forth in the plaintiff's said bill, and it also admits that the provisions of the laws were fully complied with in order to give effect to said amended articles of association.

V.

This defendant admits that on or about the 12th day of August, A. D. 1873, under and by virtue of the laws of the State of California, the Southern Pacific Railroad Co. and the Southern Pacific Branch Railroad Company, each organized and then existing as railroad corporations under the laws of California, did amalgamate and consolidate themselves into a corporation under the name and style of the Southern Pacific Railroad Company, and that a true copy of the articles of association and incorporation are found in Exhibits "A" and "B" attached to said amended bill, and admits also that all the provisions of law have been complied with in order to give effect to said articles of amalgamation and consolidation.

VI.

This defendant admits that the Congress of the United States passed an act which was approved on the 27th day of July, A. D. 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and that sections three (3), four (4), six (6), nine (9), eleven (11), twelve (12), seventeen (17), eighteen (18), and twenty (20) are correctly quoted and set forth in the said bill.

VII.

This defendant admits that by and under said last

mentioned Act of Congress, the Atlantic and Pacific Railroad Company was created and organized, and did duly accept the provisions of the said law within the time and in the manner provided in said act, but it denies that said Atlantic and Pacific Railroad Company did designate the line of its route from Springfield, in the State of Missouri, to the Pacific Coast, as required by said act.

This defendant denies that on the 9th March, 1872, or at or about any such time, the Atlantic and Pacific Railroad Company filed in the office of the Commissioner of the General Land Office, maps designating the line of its route, or otherwise in accordance with the law and denies that on or about the 9th March, 1872, said Atlantic and Pacific Railroad Company filed four maps in the office of the Commissioner of the General Land Office, as stated in said bill. Said company filed two maps and claimed that they were filed for the purpose of locating parts or fragments of a line for its road in the State of California, but the defendant denies that said maps constituted a valid location of said road in California. Certified copies of said maps are annexed to the answer heretofore filed in this suit by this defendant and marked Exhibit "A," Nos. 1 and 2, which, with the indorsements thereon, are now herein referred to and made part of this answer; and this defendant says that said railroad was not located or attempted to be lo-

eated on or about March 9, 1872, or at any such time in California, either in whole or in part otherwise than appears aforesaid by said maps. This defendant denies that the Atlantic and Pacific Railroad Company, by or through the filing of said maps, acquired the right to any lands of the United States lying opposite to the lines or route marked on said maps, and denies that said company acquired the right to select any public lands along said routes or lines as "other lands" in lieu of sections within twenty miles that had "been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of" by the United States.

These maps were sent to the General Land Office by the Secretary of the Interior with a letter dated March 9, 1872, of which a certified copy is annexed to said answer heretofore filed, marked Exhibit "B."

This defendant says that the lands mentioned in the amended bill herein lie opposite to the line of route marked on the said map, designated in said letter as No. 2 of a portion of the proposed road of the Atlantic and Pacific Railroad Company, that is, a piece of road within the State of California. "From a point on the western boundary line of Los Angeles County, California, to a point in township seven (7) north, range seven (7) east, of San Bernardino Meridian in said state."

Neither, when filed in March, 1872, nor at any such time, did it appear that said map represented any part of a line that was or was intended to be conjoined to any other part located before that time for the Atlantic and Pacific Railroad.

VIII.

Further answering, this defendant says that the Atlantic and Pacific Railroad Company afterwards, viz: on the 13th day of August, 1872, filed in the Department of the Interior, two other maps which it claimed were intended to designate the line of other fragments or portions of its railroad in California. Certified copies of said maps, and of the letter of the Secretary of the Interior of April 16, 1874, in respect thereto, are annexed to the answer filed heretofore in this suit by this defendant, marked Exhibit "C," Nos. 1 and 2, and are now herein referred to and made part of this answer. And this defendant denies that said maps constituted a valid location of the parts or fractions of road therein described, and denies that the four maps hereinbefore mentioned of four several parts of the road constituted a valid location of the said Atlantic and Pacific Railroad in California. And it denies that the said Atlantic and Pacific Railroad was ever in any otherwise lawfully located in the State of California. The grant of lands by the said Act of Congress of July 27, 1866, hereinbefore mentioned was made to aid in the construction

of a railroad "Beginning at or near the town of Springfield, in the State of Missouri, thence to the western boundary line of said state, and thence by the most eligible railroad route as shall be determined by said company to a point on the Canadian River, thence to the town of Albuquerque, on the river Del Norte, and thence by the way of the Agua Frio or other suitable pass, to the headwaters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude, as near as may be found most suitable for a railway route, to the Colorado River, at such point as may be selected by said company for crossing; thence, by the most practicable and eligible route to the Pacific." (14 Stat., 292.) And the defendant says that there is nothing in or upon said maps to identify the same as the line of road mentioned in the said Act of Congress.

And this defendant says, that it was further provided by said act as follows, that is to say:

"Sec. 18. And be it further enacted, that the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in

consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

And that the construction of a railroad from the Colorado River to San Francisco was expressly relegated and appropriated to this defendant, and the said Atlantic and Pacific Railroad Company was never authorized to construct any such line of railroad or to acquire any lands by reason of or in respect to the construction, or proposed construction, of any such line.

IX.

And this defendant denies that on or about March, 1872, the said Atlantic and Pacific Company filed in the office of the Commissioner of the General Land Office, maps designating its route from the Colorado River to Springfield, in the State of Missouri, and denies that said maps made altogether the line of railroad from Springfield, in the State of Missouri, to the Pacific Coast, which was provided for and required by said Act of Congress of July 27, 1866, to be constructed and completed by the said Atlantic and Pacific Railroad Company, and denies that the several parts of its map filed, made and constituted the whole of its line as provided for in said Act of

Congress. The said parts of its map, when taken together, showed a line terminating at San Francisco, which was not the terminus provided for by said Act of Congress.

X.

This defendant denies that on March 9, 1872, and April 22, 1872, or at any such times the Secretary of the Interior and the Commissioner of the General Land Office ordered all the odd sections of land within thirty miles on each side of the designated route of the said Atlantic and Pacific Railroad Company reserved from sale and withdrawn.

About that time the Commissioner of the General Land Office, viz., on the 22d April, 1872, ordered lands withdrawn for 30 miles on each side of the parts of lines of route attempted to be located March 9, 1872, by the two maps hereinbefore mentioned as filed March 9, 1872. The orders of the Commissioners were addressed to the Register and Receiver of the United States Land Office at San Bernardino, Los Angeles and Visalia, and were substantially as shown by the certified copy of the Commissioner's letter of said date to the officers at Los Angeles, hereto annexed marked "Q" and made part of this answer. The defendant denies that said orders of April 22, 1872, had any effect whatever upon the rights and grants of this defendant, and here refers to the fact that they were intended only to take effect upon pub-

lie lands not reserved, sold, granted or otherwise appropriated at the time of filing said maps, to wit, March 12 (9th?), 1872.

This defendant avers that the lands involved in this suit had previously, on the 3d April, 1871, by the filing of the map of definite location of the defendant's railroad, been duly reserved from sale by and under the said twenty-third section of the Act of Congress of March 3, 1871, and the 6th section of the Act of Congress of July 27th, 1866, which said sections are quoted in the bill of complaint herein, and avers also that said lands had been duly withdrawn from market and appropriated for the use of this defendant by the order of the Commissioner of the General Land Office to the Register and Receiver of the U. S. Land Office at Los Angeles, issued April 21, 1871, a copy of which is hereto annexed, marked "R," and made part of this answer.

This defendant admits that said Atlantic and Pacific Railroad Company did construct and complete a portion of its road west of Springfield, Missouri, in the time and manner required by said act but did not at any time construct or complete any railroad west of the Colorado River.

XI.

This defendant admits the enactment of a law of the United States, approved July 6, 1886, entitled "An act to forfeit the lands granted to the Atlantic

and Pacific Railroad Company to aid in the construction of a railroad and a telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement, and for other purposes" and that thereby the lands and rights to lands in California theretofore granted and conferred upon said Atlantic and Pacific Railroad Company were forfeited, but denies that they were thereby "re-sunned" and "restored to entry" and because of the manifest insufficiency of the statement of the provisions of said law in the bill of the plaintiff, the entire statute is now referred to by this defendant. Stat. at Large, Vol. 24, p. 123.

XII.

Traversing the allegation in the plaintiff's bill, that the Southern Pacific Railroad Company, the defendant herein, is not the same Southern Pacific Railroad Company which was organized and incorporated under articles of amalgamation and consolidation dated October 11, 1870, and amended April 11, 1871, as in said bill set forth, this defendant says that it is the same company, and that the changes and amendments made from time to time in its articles and organization have been made in accordance with the laws of the State of California.

This defendant avers that it is the same Southern Pacific Railroad Company that is mentioned in the Act of Congress of 25th June, 1868, 15th volume of

Statutes, p. 79, and in the act of 25th July, 1868, 15th volume of Statutes, p. 187, and in the Joint Resolution of Congress of June 28, 1870, 10th volume, U. S. Statutes, p. 382, and in the 23d section of the Act of March 3, 1871, 16th U. S. Stat., p. 579, which is as follows:

“Sec. 23. That for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California, is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California by the Act of July 27, 1866. Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company.”

Approved March 3, 1871.

This defendant avers that on the 3d April, 1871, it designated the line of its said railroad, as described in said section 23, by a map thereof filed in the office of the Commissioner of the General Land Office, and thereupon the said Commissioner ordered all the public lands in odd sections within thirty miles of such route to be withdrawn from market. Certified copy

of the map filed by this defendant in the office of the Commissioner of the General Land Office, is annexed to the answer heretofore filed by this defendant marked Exhibit "D," and the same is now referred to and made part of this answer.

This defendant avers that it is the same railroad company that constructed the railroad provided for in the said 23d section of said Act of Congress of March 3, 1871, and that it fully constructed and completed its road according to said Act and the construction thereof has been accepted and approved by the President of the United States, construction of the last mile of said road having been accepted by President Hayes on the 23d of January, 1878.

This defendant hereto annexes, and makes part of this answer, certified copies of five several reports of the Secretary of the Interior to the President of the United States, and of the indorsements thereon made by the President upon the same, marked Exhibit "S" No. 1, No. 2, No. 3, No. 4, and No. 5, and this defendant denies that the Commissioners appointed for that purpose did "unlawfully make and file their alleged acceptance of the whole of said railroad by sections."

The Commissioners, in accordance with law, made and filed their reports, and the same were accepted by the Secretary of the Interior and the President of the United States, and this action of the Secre-

tary and President is binding upon the United States, and its validity cannot be called in question in this action.

This defendant denies that the following lands at all times since their acquisition from Mexico, "have been public lands of the United States," and denies that the United States has full title thereto at this time, said lands being described as follows: North of the base line and west of San Bernardino meridian in township one (1), range eight (8).

| | |
|--------------------------------------|--------------|
| The W. $\frac{1}{2}$ of Sec. 31..... | 321.60 acres |
| All of Sec. 29..... | 640.00 " |
| The S. $\frac{1}{2}$ of Sec. 33..... | 320.00 " |
| All of Sec. 35..... | 640.00 " |

In Township one (1), Range nine (9)

| | |
|---|------------------|
| The N. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ Sec. 27. | 80.00 " |
| | <hr/> 2,001.60 " |

This defendant admits that the line attempted to be located for the Atlantic and Pacific Railroad in California crosses the line of the Southern Pacific Railroad, located under the Act of March 3, 1871, but denies that the defendant's location was upon the same general line as that of the Atlantic and Pacific Railroad Company, it denies that any valid location of the Atlantic and Pacific Railroad was or could be on the same general line as the authorized and located and constructed line of this defendant. It denies that the lands involved in this suit are sit-

uated opposite to portions of said route which are upon the same general line and, to support such denial, refers to the certified copy of the location of the route of the Southern Pacific Railroad of California, made under the Act of March 3, 1871, and filed in the office of the Commissioner of the General Land Office April 3, 1871, with the letter of the Acting Secretary of the Interior of that date, annexed to the answer heretofore filed, marked Exhibit "D," Nos. 1 and 2, and now referred to and made part of this answer.

And this defendant alleges that when its line of route was located on the 3d day of April, 1871, it was demonstrated and found that said route was not upon the line of the Atlantic and Pacific Railroad or upon the line of any other railroad route, to aid in the construction of which lands had been granted by the United States; and that under and by virtue of said Act of March 3, 1871, and the map of location filed on the 3d day of April, 1871, the lands described in said patents were reserved for and appropriated to this defendant, whose title thereto has become perfect and complete by the construction of its road as prescribed in said Act.

That the said Atlantic and Pacific Railroad Company's pretended line was not located until subsequent to the year 1871; that when sought or pretended to be located, it was and was found to be on a

wholly unauthorized route, not prescribed or permitted under any Act of Congress in relation to or affecting said Atlantic and Pacific Railroad Company.

This defendant admits that on the south side of the pretended location of the Atlantic and Pacific road, and within 30 miles thereof, but also within 20 miles of the location of the Southern Pacific Railroad, there was not on April 3, 1871, and is not now, enough public land in the odd sections to equal ten (10) alternate sections per mile on each side of the pretended location of the line of said Atlantic and Pacific Railroad Company, within such limits, and this defendant admits that the above-described tracts of land are situated more than 20 miles and less than 30 miles from the line of pretended location of the Atlantic and Pacific Railroad, and less than 20 miles from the said located line of the Southern Pacific Railroad.

This defendant avers that said tracts of land have been granted, by the said 23d section of the Act of March 3, 1871, to it, The Southern Pacific Railroad Company.

XIII.

Further answering, this defendant admits that on or about March 14, 1840, a grant of lands was made by Juan B. Alvarado, the Governor of the Department of the Californias, to Louis Arenas, Ig-

nacio Palomares and Ricardo Vejar for the place or land called San Jose, with an additional league of grazing land, and that under the Act of Congress of March 3, 1871, (9 Stat. 633), said lands were duly confirmed by the United States District Court for the Southern District of California, in the years 1855, 1856, and 1857, one undivided third thereof to Henry Dalton, one undivided third part to Ignacio Palomares, and one-third part to Ricardo Vejar, by separate decrees in cases No. 121, 122 and 128 on the docket of said Court; and this defendant admits that said confirmations were entered with like terms and descriptions of said lands in the decrees of confirmation, and that the boundaries of the Rancho or place called San Jose, so confirmed, as stated in the amended bill of complaint, are substantially correct.

And this defendant admits that said decrees of confirmation became final, and alleges that the decree in No. 121 became final April 4, 1857, by dismissal of the appeal that had been taken therefrom.

XIV.

This defendant, further answering, denies that the Surveyor General of the United States for California did, in the year 1868, "under the law in that behalf," locate, survey and segregate said San Jose grant so as to satisfy said grant, and denies that said Surveyor General had legal authority in 1868 to

survey and set off said lands from the lands of the United States.

This defendant denies that a certain survey, made by one George H. Thompson in August, 1868, was made with due authority of law, or under legal and valid instructions issued to him for that purpose by the United States Surveyor General for California. And this defendant denies that the said survey by Thompson was "duly approved" by the Surveyor General, and denies, that the same was spread upon the records and plats of the General Land Office. The said survey, made by said Thompson, included a large quantity of public lands of the United States that had never been granted by the Mexican authorities to said Arenas, Palomares and Vejar, and, among other public lands, the tracts above-described were wrongfully included in said Thompson survey.

XV.

This defendant avers that a regular survey of said San Jose Rancho was made by Henry Hancock, United States Deputy Surveyor, in October and November, 1858, which was approved by the United States Surveyor General for California, J. W. Mandeville, January 4, 1860; the plat of said survey was advertised, in accordance with section one of the Act of Congress, approved June 14, 1860, in regard to the survey and location of confirmed private land claims in California (12 Stat. 33) as appears from

the certified copy of the plat of said survey and indorsements thereon, which are annexed to the answer of this defendant, heretofore filed, marked Exhibit "E," which are now referred to and made a part of this answer; and the said survey as approved by said Surveyor General Mandeville had been officially transmitted to the Commissioner of the General Land Office at Washington, and in August, 1868, was pending for examination by the said Commissioner of the General Land Office, and for patent thereon, under said Act of Congress of June 14, 1860, and the defendant says that the United States Surveyor General for California had not jurisdiction under these circumstances to make another survey of said Rancho San Jose in August, 1868, when the pretended survey was made by George H. Thompson.

XVI.

This defendant says that the survey approved by H. W. Mandeville, Surveyor General, was under examination by the Commissioner of the General Land Office, with a view to the issuing of a patent thereon, when the surreptitious survey by said Thompson was made, without authority of law or instructions from the said Commissioner. The plaintiff has had notices of the illegal character of Thompson's work, as appears by the letters of the Commissioner of the General Land Office, addressed to the United States

Surveyor for California upon this subject, dated May 6, 1868, and May 8, 1869, of which certified copies are annexed to the previous answer of this defendant in this suit, marked Exhibit "F," Nos. 1 and 2, and which are now referred to and made part of this answer.

And it is shown by said letter of May 8, 1869, that a fraudulent attempt was made, in or through the Surveyor General's office at San Francisco, to obtain a patent on said Thompson survey for 15,000 acres or more of lands of the United States, by annexing a false certificate to the Thompson plat, certifying that it had been advertised under the Act of Congress of July 1, 1864, 11 Stat. 352, when in fact it was Hancock's plat of survey that had been advertised. The said Thompson survey was not authorized by law or instructions, and was a fraud upon the United States. It was not proper evidence of the out boundaries or the true boundaries of the San Jose Rancho. It was not the regular or authentic work of the United States Officers; and to support these allegations this defendant refers to the certified copies of the letters of the Commissioner of the General Land Office above-mentioned, dated May 6, 1868, and May 8, 1869.

The said survey made by Hancock and approved by the Surveyor General on the 4th January, 1860, did not include any, or any part, of the lands

involved in this suit. Said survey was the existing segregation of the San Jose Rancho, from the public lands, made in accordance with the Statutes of the United States, and was presumptively valid at the time the grant of public land was made to this defendant March 3, 1871, and at the time the said grant was definitely located, viz, April 3, 1871.

The lands involved in this suit situated in Township one (1) north, range eight (8) west, San Bernardino Meridian, were surveyed as public lands in the year 1865, as appears by the certified copy of the plat of survey marked Exhibit "G," annexed to the answer heretofore filed by this defendant, which is now herein referred to and made part of this answer.

XVII.

This defendant denies that said plat of survey by Henry Hancock, approved January 4, 1860, had not become complete and final when said Thompson survey was made. Referring to the Act of Congress of 23d July, 1866, "To quiet land titles in California," U. S. Stat., Vol. 14, p. 218, and to section eight (8) of said law cited in this amended bill, this decision says that said law had no application and has now no application to the San Jose Rancho, or the survey thereof. The said Thompson survey was not made under, or in conformity to, said Act, but, as shown on the plat thereof, was made in contravention there-

of. Instead of setting off to the claimants the quantity of land confirmed (the decrees of confirmation, as shown in the bill of complaint, were by boundaries, and not by quantity), according to the lines of the public surveys, as directed in said section 8, his survey extended to places and objects outside of the boundaries.

The Thompson survey was not sanctioned by the law of 1866. On the contrary, it appears from the letters of the Commissioner of the General Land Office of May 6, 1868, and May 8, 1869, and the final decision of the Secretary of the Interior of September 20, 1872, that said survey was rejected as not authorized by any law, and that the final survey of the Rancho San Jose was made under the Act of July 1, 1864.

This defendant denies that up to June 17, 1871, the Thompson survey was sub judice, and denies that the lands involved in this suit were embraced in the boundaries of the Mexican Grant to Palomares, Vejar and Arenas.

This defendant admits that the final survey of the confirmations of the said San Jose Rancho did not include any of the tracts in controversy in this cause.

This defendant avers that the grant of San Jose was a grant for a tract by boundaries, and that said boundaries were finally determined and described by and in the said separate decrees confirming the

said rancho in undivided third parts to said Dalton, Palomares and Vejar; and when said decrees became final in the years 1857 and 1858, the boundaries were settled, and that thereafter the only duty of the Surveyor General was to ascertain and survey these boundaries.

The final survey was made pursuant to a decision of the Secretary of the Interior upon the true boundaries of the grant, dated September 20, 1872, of which a certified copy is annexed to the answer of this defendant hereinbefore filed, marked Exhibit "H", and is now referred to and made part of this answer. This final survey did not include any of the lands involved in this suit, and after the decrees of confirmation became final, which was prior to the grant of lands by the United States to this defendant, there were no lands within the San Jose Rancho, except such as have been included in the final survey thereof.

XVIII.

This defendant admits that, under date of March 28, 1876, April 4, 1879, and December 27, 1883, the patents were issued to this defendant for the lands hereinabove described, but denied that said patents were issued inadvertently or without authority. On the contrary, this defendant avers that said patents were issued with due deliberation and in strict conformity with the law, and that the signatures of the

President of the United States and the Recorder of the General Land Office thereto were affixed fairly and properly and under due authority of law. This defendant here refers to the Exhibits 1, Nos. 1 and 2, annexed to its answer heretofore filed, and makes the same part of this answer.

When the grant of lands was made to this defendant March 3, 1871, and its grant was located April 3, 1871, all the lands involved in this case were public lands of the United States.

XIX.

This defendant admits that the value of the lands demanded in this suit exceeds the sum of five thousand dollars, and denies that the Secretary of the Interior of the United States demanded on the 16th August, 1887, a relinquishment from this defendant of its claim to all the lands involved in this suit. Said demand related to and included only about fourteen hundred and one 60.100 (1,401.60) acres of the lands hereinbefore mentioned, which will more fully appear from the certified copy of the letter making the demand annexed to the answer of the defendant heretofore filed, marked Exhibit "K", and here referred to and made part of this answer.

The defendant admits that it has refused to comply with said demand.

The respondent denies all and all manner of unlawful combination and confederacy wherewith it is

by the said bill charged without this, that any other matter, cause, or thing in the complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true, to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this Honorable Court shall direct; and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH D. REDDING,

Solicitor and of Counsel for the Respondent, the
Southern Pacific Railroad Company.

CREED HAYMOND R.

Of Counsel for Respondent.

I hereby certify that I am solicitor and of counsel for the Respondent, the Southern Pacific Railroad Company, in the foregoing cause, and that, in my opinion the foregoing answer is well founded in point of law.

JOSEPH D. REDDING,

Solicitor and of Counsel for Respondent.

United States of America,
District of California.

I, J. L. Willcutt, being duly sworn, depose and say:
That I am the Secretary of the Southern Pacific Railroad Company, one of the respondents in the above-entitled cause; that I have read the foregoing answer and know the contents thereof, and the same is true as I verily believe.

J. L. WILLCUTT.

Subscribed and sworn to before me this 23d day of
December, 1889.

[Seal]

E. B. RYAN,
Notary Public.

[Endorsed]: No. 68. Circuit Court of the
United States, Ninth Circuit, Southern District of
California. United States of America, vs. S. P. R.
R. Co., et al. Answer of S. P. R. R. Co. Service
hereof admitted by copy January 4, 1890. Joseph
H. Call, Special, Asst. U. S. Atty. Filed Dec. 30th,
1889. Wm. M. Van Dyke, Clerk. By E. H. Owen,
Deputy Clerk. Joseph D. Redding, Solicitor for
Respondents, S. P. R. R. Co. No. 8 Montgomery
Street, San Francisco, Cal.

Mandate of Supreme Court U. S. in Case No. 68.

UNITED STATES OF AMERICA—ss.

The President of the United States of America, to
the Honorable the Judges of the Cir-
[Seal] cuit Court of the United States for the
Southern District of California, Greeting:

Whereas, lately in the Circuit Court of the United States for the Southern District of California before you, or some of you, in a cause between The United States of America, complainant, and The Southern Pacific Railroad Company, The Southern Pacific Company of Kentucky, Lewis H. Bixby, H. J. Parks, Clara E. Cumberland, Thomas S. Oldham, O. Morgan, The Pomona Land and Water Company, L. L. Bradbury, H. M. Crampton, Carlton Seaves, Stoddard Jess, Elias Fink, Charles N. Peck, S. W. Moore, George D. Ripley, C. C. Johnson, William S. Henderson, Frank Johnson, George Rhores, Cassie L. Foss, and Joseph Hinkell, defendants, wherein the decree of the said Circuit Court, entered in said cause on the 6th day of March, A. D. 1891, is in the following words, viz:

“This cause having heretofore been brought to a hearing upon the pleadings and proofs, and having been argued by Joseph H. Call, Esq., special assistant United States Attorney for the Southern District of California, of counsel for the said complainants,

and by Joseph D. Redding, Esq., J. A. Anderson, Esq., and Edwin Baxter, Esq., counsel for said defendants, and having thereupon been submitted to the Court for its consideration and decision, and the Court, after due deliberation thereon, having ordered that the complainant's second amended bill of complaint herein be dismissed.

It is ordered, adjudged and decreed that the said second amended bill of complaint of the said complainants, the United States of America, be, and the same is hereby, dismissed.

Los Angeles, March 6th, 1891.

ROSS,

District Judge.

Decree entered and recorded March 6th, 1891.

WM. M. VAN DYKE,

Clerk.

—as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord, one thousand eight hundred and ninety-two, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby, reversed.

And it is further ordered that this cause be, and the same is hereby remanded to the said Circuit Court with directions to enter a decree in favor of the plaintiff for the relief sought.

December 12, 1892.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this Court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 23d day of March, in the year of our Lord one thousand eight hundred and ninety-three.

JAMES H. McKENNY,

Clerk of the Supreme Court of the United States.

[Endorsed]: Supreme Court of United States. No. 863, October Term, 1892. The United States vs. The Southern Pacific Railroad Co., et al. Mandate. Filed Apr. 4, 1893. Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

No. 68—Consolidated Numbers 67, 68 and 69.

UNITED STATES OF AMERICA,

Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY (a Corporation), the SOUTHERN PACIFIC COMPANY of KENTUCKY (a Corporation), LEWIS H. BIXBY, H. J. PARKS, CLARA E. CUMBERLAND, THOMAS S. OLDHAM, O. MORGAN, THE POMONA LAND AND WATER COMPANY (a Corporation), L. L. BRADBURY, H. M. CRAMPTON, CARLTON SEAVES, STODDARD JESS, ELIAS FINK, CHARLES N. PECK, S. W. MOORE, GEORGE D. RIPLEY, C. C. JOHNSON, WILLIAM S. HENDERSON, FRANK JOHNSON, GEORGE RHORES, CASSIE L. FLOSS and JOSEPH HINCKELL,

Defendants.

Decree in Cases Nos. 67, 68 and 69 (Consolidated).

This cause came on to be further heard at this term, and was argued by counsel; and thereupon,

upon consideration thereof and pursuant to the mandate of the Supreme Court heretofore entered of record herein,

It is ordered, adjudged and decreed by the Court that the United States is the owner by absolute title in fee simple of the following described lands, to wit:

The west one-half ($1\frac{1}{2}$) of section thirty-one (31), all of section twenty-nine (29), the south half of section thirty-three (33), all of section thirty-five (35), township one (1) north, range eight (8) west, the north half ($1\frac{1}{2}$) of the southwest one-fourth ($\frac{1}{4}$) of section twenty-seven (27), township one (1) north, range nine (9) west, San Bernardino base and meridian, California.

It is further ordered, adjudged and decreed that those three certain patents from the United States to defendant Southern Pacific Railroad Company, dated March 29, 1876, April 4, 1879, and December 27, 1883, respectively, be and hereby are annulled and vacated and decreed to be void in so far as said patents, or either of them, affect or include the lands hereinbefore particularly described.

Provided, that this decree shall not affect any settlement right, or right of occupancy of defendant, Joseph Hinkell, to the southeast quarter ($\frac{1}{4}$) section thirty-three (33), township one (1) north, range

eight (8) west, San Bernardino base meridian, under any settlement law of the United States.

And it is further ordered, adjudged and decreed that the United States have and recover their proper costs to be taxed.

Costs \$1723.85.

ROSS,

Dist. Judge.

Decree entered and recorded April 27th, 1893.

WM. M. VAN DYKE,

Clerk.

[Endorsed]: No. 68. In the United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Co., et al. Decree. Filed Apr. 27, 1893. Wm. M. Van Dyke, Clerk. Joseph H. Call, Special Ass't U. S. Att'y.

**Clerk's Certificate to Parts of Record in Cases Nos.
67 68 and 69. (Consolidated).**

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing 58 typewritten pages numbered from 1 to 58, both inclusive, to be a full, true and correct copy of the following parts of the record in the cause entitled, The United States of America, Complainants, vs. Southern Pacific Railroad Company, et al., Defendants, Numbers 67, 68 and 69, consolidated by order of the Court, viz:

Amended bill, filed November 22, 1889; answer of defendants, filed December 30, 1889; mandate of Supreme Court, filed in Circuit Court April 4, 1893, and final decree, filed April 27, 1893, as the same appear on file and of record in my office in said cause.

Attest my hand and the seal of said Circuit Court, this 9th day of May, A. D. 1904.

[Seal]

WM. M. VAN DYKE,

Clerk.

[Endorsed]: Nos. 67, 68 and 69. Consolidated by order of Court U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America, vs. The Southern Pacific Railroad Company, et al. Certified Copy of Parts of Record.

U. S. Cir. Ct. So. Dist. Cal. The United States vs. Southern Pacific R. R. Co. No. 1114. Complainant's Exhibit "C." Leo Longley, Special Examiner. Filed Jul. 1, 1905. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

Complainant's Exhibit "D."

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, and D. O. Mills and Garrit L. Lansing, Trustees, The City Brick Company, Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matildo L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. M. Benham, Jesse Martin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Bunell, Frederick H. Busby, A. W. Butler, H. A. Bond, William H. Carlson, William H. Carlson, V. E. Carson, B. F. Carter, Benjamin F. Carter, Harry Chandler, Fred Chandler, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, Mrs. L. C. Chormicle, Byron O. Clark, George Claussen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Cory, Seaton T. Cull, Stefano

Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James E. Duns-
moore, Edward G. Durant, Robert Dunn, Hen-
ry Elms, Fairmont Land and Water Company,
Farming and Fruit Land Company, George W.
Fentrees, S. W. Ferguson, William Ferguson,
William Freeman, Joseph W. Furnival, J. Gar-
ber, F. C. Garbutt, J. Drew Gay, F. A. Geier,
Ambrose F. George, Will D. Gould, Mrs. Mary
L. Gould, Thomas E. Gould, James Greton,
W. F. Grosser, D. J. Haines, Herman Haines,
James M. Hait, Simeon Hamberg, Jacob
Harpe, Alice A. Hall, Calvin Hartwell, Will-
iam T. Hamilton, William T. Hamilton, James
Hamilton, Peter Hamilton, John C. Haskell,
John C. Hay, Mary Jackson Hall, Julius Hey-
man, J. M. Hill, John D. Hoffman, August
Hoelling, J. F. Holbrook, W. R. Hughes,
George A. Hunter, J. F. Houghton, E. J. Is-
mert, W. W. Jenkins, Thomas J. Johannsen,
M. D. Johnson, John J. Jones, A. S. Joseph,
John Kenealey, Frederick Kenworthy, Rich-
ard Kichline, Joseph Kurtz, Charles Kutsch-
mar, Mrs. Ammoretta J. Lanterman, T. B.
Lawhead, L. B. Lawson, Lawson M. La Fetra,
Stephen L. Leighton, Miguel Leonis, George
Loomis, George Loomis, Marion C. Loop, Pab-

lo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathiason, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossy Melrose, W. E. McVay, Thomas Menzies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mose-ly, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, North Pasadena Land and Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequois, Henry C. Shearman, Henrietta Shirpser, Rebecca Jetta Schirpser, David Schirpser, Max Schirpser, Gianbatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer,

H. G. Stevenson, H. J. Stevenson, M. W. Stim-
son, Robert Strathearn, R. P. Strathearn,
Eleanor Sussman, D. M. Sutherland, John
Sweeney, W. H. Taggart, James R. Taylor,
Mary G. Tongier, James R. Townsend, Mrs.
C. L. True, L. Tunison, J. S. Turner, George
S. Umpleby, F. Veysset, George Vilas, Alden
R. Vining, Daniel A. Wagner, S. A. Waldron,
W. W. Wallace, C. H. Watts, Mrs. Julia J.
Wheeler, A. C. Whitacre, M. L. Wicks, Moya
Wicks, Mrs Jennie L. Wicks, Mary C. Will-
iams, C. N. Wilson, Robert N. C. Wilson, J.
Youngblood,

Defendants.

Amended Bill of Complaint in Case No. 184.

To the Judges of the Circuit Court of the United
States, for the Southern District of California:

I.

The United States of America, by the Attorney
General thereof, by an order of Court first had and
obtained, brings this its amended bill of complaint
against The Southern Pacific Railroad Company,
acting as a corporation under and by virtue of the
authority hereinafter set forth: D. O. Mills and
Garrit L. Lansing, trustees; the City Brick Com-
pany, a corporation organized and existing under
and by virtue of the general laws of the State of

California; the Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, a corporation organized and existing under and by virtue of the laws of Great Britain; the Fairmont Land and Water Company, the Farming and Fruit Land Company; the North Pasadena Land and Water Company, and the Pacific Coast Oil Company, each a corporation organized and existing under and by virtue of the laws of California; and Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilda L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. M. Benham, Jesse Martin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Bunell, Frederick H. Busby, A. W. Butler, H. A. Bond, William H. Carlson, William H. Carlson, V. E. Carlson, B. F. Carter, Benjamin F. Carter, Harry Chandler, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, Mrs. L. C. Chormicle, Byron O. Clark, George Claussen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Corey, Seaton T. Cull, Stefano Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward G. Durant, Robert Dunn, Henry Elms, George W. Fentrees, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C.

Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealey, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kutchmar, Mrs. Amorette J. Lanterman, T. B. Lawhead, L. B. Lawson, Lawson M. La Fetra, Stephen L. Leighton, Miguel Leonis, George Loomis, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathiason, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossie Melrose, W. E. McVay, Thomas Menzies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullaly, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, James O'Reilly, George L. Ott, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee,

James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequois, Henry C. Shearmon, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Gianbatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, E. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Taggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysset, George Vilas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitacre, M. L. Wicks, Moye Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, Robert N. C. Wilson, and J. Youngblood; and each of said defendants being a citizen of the State of California, and residing therein, except said Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, which, as your

orator alleges upon its information and belief, is a citizen of Great Britain and a British subject.

And thereupon your orator alleges and shows unto the Court that the lands hereinafter described were acquired by the United States of America from Mexico in the year 1846, and the title to said lands was confirmed to your orator by treaty of Guadalupe Hidalgo in the year 1848; and all of said lands were then, ever since have been and now are owned by the United States, by title in fee simple, and your orator during all of said times has been, and now is, in possession thereof; said lands being described as follows, to wit:

All of the sections of land designated by odd numbers in townships three (3) and four (4) north, ranges five (5), six (6) and seven (7) west; township one (1) north, ranges sixteen (16), seventeen (17) and eighteen (18) west; townships six (6) and south three-fourths of township seven (7) north, ranges eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18) and nineteen (19) west; also all the sections of land designated by odd number as shown by the public surveys, embraced within the townships from number two (2) north to number five (5) north, both numbers included, and ranges from number eight (8) west to number eighteen (18) west, both numbers included, except sections twenty-three

(23) and thirty-five (35), in township four (4) north, range fifteen (15) west, and except sections one (1), eleven (11) and thirteen (13), in township three (3) north, range fifteen (15) west; also the unsurveyed lands within said area which will be designated as odd numbered sections when the public surveys according to the laws of the United States shall have been extended over such townships; all the aforesaid lands being surveyed by San Bernardino Base and Meridian, and situated within the State of California.

II.

Your orator further shows that, by the Act of Congress approved July 27, 1866, entitled "An Act Granting Lands to Aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company, and granted to said company, in aid of the construction of such railroad, a large amount of lands in the State of California and other States and Territories, and to the whole of which said Act your orator refers (see U. S. Statutes, volume 14, page 292).

Section 3 of said Act provides as follows:

"That there be and hereby is granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the

Pacific Coast, and to secure the safe and speedy transportation of mails, troops, munitions of war and public stores, over the route of said line of railway and its branches, every alternate section of public land not mineral designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State and whenever on the line thereof the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is designated, by a plat thereof filed in the office of the Commissioner of the General Land Office, and whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers; provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been hereto-

fore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this Act."

And section 18 of said Act provides as follows:

"Sec. 18. That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road, and in consideration thereof, to aid in its construction, shall have similar grants of land subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations as to time and manner with the Atlantic and Pacific Railroad herein provided for."

Your orator further shows that said Atlantic and Pacific Railroad Company duly accepted said grant and proceeded to construct said road, and did locate on the ground and designate upon a plat or map the whole of said line of railroad under said Act, from Springfield, Missouri, by way of the points and places named in said Act, and in the time and manner provided in said Act, to the Pacific Ocean; and

on or about ———, 1866, did file such plat in the office of the Commissioner of the General Land Office, and which designation and location was approved by the Secretary of the Interior at that time, and all the odd sections of public lands on each side of said road, for thirty miles, were thereupon withdrawn from market and reserved; including said lands in suit herein which fell within the twenty mile limits of said line.

III.

Your orator further shows the Court that, by section 23 of an Act of Congress approved March 3, 1871 (see U. S. Stats., Vol. 16, p. 573), entitled "An Act to Incorporate the Texas and Pacific Railroad Company, and to aid in the construction of its road and for other purposes," it was provided as follows:

"That for the purpose of connecting the Texas and Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near the Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California, by the Act of July 27, 1866.

“Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company.”

IV.

Your orator further shows that by the Act of Congress approved July 6, 1886, entitled “An Act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast and to restore the same to settlement and for other purposes,” all the lands and rights to lands in California theretofore granted and conferred upon the said Atlantic and Pacific Railroad Company were forfeited and resumed to the United States, and restored to the public domain, for noncompletion of that portion of said railroad to have been completed in California, no part of said road having been constructed in California.

V.

Your orator is informed and believes, and so alleges the fact to be, that the defendants herein make some claim of ownership to the lands above described, the exact nature and extent of such claims being unknown to your orator; but your orator is informed and believes, and so alleges the fact, that said defendants claim said lands under and by virtue of

said Act of Congress of March 3d, 1871, above set forth, granting lands to the Southern Pacific Railroad Company to aid in the construction of a railroad and telegraph line from Tehachapi Pass, via Los Angeles, to a point at or near the Colorado River, and to there connect with said Texas and Pacific Railroad Company, and said defendants claim that said Southern Pacific Railroad Company did accept the terms and conditions of said grant, and did designate the route of its road between said points within the time and manner provided in said Act of Congress, but your orator alleges that the designated line of route of said Southern Pacific Railroad Company so claimed and pretended to be located as aforesaid lies upon the same line as that of the Atlantic and Pacific Railroad Company, and the lands in suit herein, if said Southern Pacific Railroad Company had designated its said line of route as claimed by said defendants, would be at the place where the said routes would be upon the same general line, and such routes would have intersected each other.

VI.

Your orator further alleges that, if said Southern Pacific Railroad Company had designated its line of route from Tehachapi Pass by way of Los Angeles to a point at or near the Colorado River by way of Los Angeles to a point at or near the Colorado

River as claimed at all, that such route would have been upon the same general line as the route of said Atlantic and Pacific Railroad Company, located as aforesaid, and all the lands in suit herein would have fallen with the limits of the grant to each of said companies and in such overlapping limits within the twenty mile and primary limits of said Atlantic and Pacific Railroad; but your orator alleges that none of said lands were covered by said grant to said Southern Pacific Railroad Company, and none of said lands were of the category of lands which were to be granted to said company.

VII.

Your orator further alleges and shows unto the Court that all of the lands in suit herein are situated within twenty miles of the designated line of route of said Atlantic and Pacific Railroad Company and within the primary and twenty mile limits of said grant; and as respects the mineral character of said lands, and of every tract thereof, they were in the same condition in that respect during the whole of the year 1866, that they have been at all times from that year down to and including the 3d day of April, 1871.

VIII.

Your orator is informed and believes, and so alleges the fact to be, that the claim of defendants to

said lands is invalid, and not founded upon any legal or equitable right, but is a mere pretense and excuse for the defendants to trespass upon said lands.

IX.

Your orator is informed and believes, and so alleges the fact to be, that the defendants herein claim that a line of railroad and telegraph line from Tehachapi Pass, by way of Los Angeles, to the Colorado River, has been constructed by the Southern Pacific Railroad Company within the time and in the manner provided by said Act of Congress of March 3, 1871, above referred to, in which it is therein provided for the construction of a railroad and telegraph line between said points, and that Commissioners appointed by the President of the United States have reported that such railroad was constructed in all respects in compliance with said Act; but your orator alleges that such claims and pretenses are unfounded, and that said Southern Pacific Railroad Company named in said Act of Congress of March 3, 1871, has not constructed any railroad or telegraph line between said points within the time or manner provided by said Act, nor at all.

X.

Your orator further alleges that, on December 2, 1865, a corporation was organized under the laws of the State of California by the name and style of

the Southern Pacific Railroad Company, and under a general law thereof, approved May 20, 1861, entitled "An Act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," which said Act is printed in the Statutes of California of 1861, at page 607, and to which Act your orator refers.

XI.

Your orator further alleges that said corporation was formed for the purpose and with the corporate power, as stated in its articles of incorporation, or constructing, owning and maintaining a railroad from some point on the Bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego, to the town of San Diego, in said State; thence eastward through said county of San Diego, to the eastern line of the State of California, there to connect with the contemplated railroad from the eastern line of the State of California to the Mississippi River.

XII.

Your orator further shows that, on October 11, 1870, said Southern Pacific Railroad Company entered into pretended articles of consolidation and amalgamation with the San Francisco and San Jose Railroad Company, a corporation organized under

the laws of California with the similar powers, and the Santa Clara and Pajaro Valley Railroad Company, also a corporation organized under the laws of California with similar powers, by which pretended articles of consolidation and amalgamation said several companies agreed to consolidate and amalgamate their capital stock, debts, property, assets and franchises, making a different capital, issuing new stock and creating a new and different corporation by the name and style of "The Southern Pacific Railroad Company," which pretended articles were signed, published and filed in the mode as provided by said general law of California; but your orator alleges that the articles of incorporation of said railroad companies respectively, and of neither of them, authorized said companies to consolidate or amalgamate with any other railroad company; and your orator is informed and believes, and so alleges the fact to be, that such pretended consolidation was unauthorized by the laws of the State of California and without the consent of said State, and was unauthorized by the laws of the United States and without authority from the United States, and that such pretended consolidation was and is illegal and void.

XIII.

Your orator further alleges and shows unto the Court that on the 12th day of August, 1873, said Southern Pacific Railroad Company, the corporation

pretended to be created by said articles of consolidation and amalgamation of October 11, 1870, as aforesaid, and the Southern Pacific Branch Railroad Company, a corporation organized and existing under the laws of the State of California, formed for the purpose and with the corporate power as stated in its articles of incorporation, of constructing, owning and maintaining a railroad within the State of California, did pretend to consolidate and amalgamate their capital stock, debts, franchises and rights, and did enter into pretended articles of consolidation and amalgamation, by which said two companies agreed to amalgamate and consolidate their capital stock, debts, property, assets and franchises, creating a new capital stock and issuing new certificates of stock and purporting to create a new and different corporation by the name and style of "The Southern Pacific Railroad Company," a copy of which pretended articles of consolidation and amalgamation are hereto attached, marked Exhibit "A," and made a part hereof; and did duly sign such articles and publish and file the same as required in that respect by the laws of the State of California; but your orator alleges that the articles of incorporation of said two companies respectively, and neither of them, authorized or empowered said companies or either of them to enter into any consolidation or amalgamation with any other railroad company, and did not

authorize them or either of them to sell or transfer its entire railroad to any other railroad company; and your orator alleges that such pretended articles of consolidation and amalgamation were illegal and void, and were unauthorized and prohibited by the laws of the State of California, and were unauthorized and prohibited by the laws of the United States; and were entered into without any authority from the Congress of the United States or any other competent authority; and by entering into such pretended articles of consolidation and amalgamation said Southern Pacific Railroad Company, which was named in said Act of Congress of March 3, 1871, forfeited, abandoned and released to the United States all the lands granted by said Act of Congress of March 3, 1871, and all the rights, grants, franchises and privileges conferred by said Act, and all right to earn or acquire any and all lands under said Act.

XIV.

Your orator is informed and believes, and so alleges the fact to be, that the Southern Pacific Railroad Company which is defendant herein, claims to have pretended patents issued by the United States in due form of law to it said Southern Pacific Railroad Company, purporting to convey to said Company a portion of the lands in suit herein, but which lands are unknown to your orator; but your orator alleges that if any such patents were issued they

were issued illegally and without any authority of law, and are illegal and void.

XV.

Your orator is informed and believes, and so alleges the fact to be, that certain of the defendants herein, but which defendants are unknown to your orator, claim to be bona fide purchasers for value from the Southern Pacific Railroad Company, the corporation named in said Act of Congress of March 3, 1871, and claim that their rights to certain tracts of land are protected and confirmed by the Act of Congress approved March 3, 1887, entitled "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes." (See 24 Statutes, 556.)

XVI.

Your orator further alleges and shows unto the Court that defendants D. O. Mills and Garrit L. Lansing have a mortgage or deed of trust from defendant Southern Pacific Railroad Company, covering or purporting to cover the above-described lands, to secure the payment of certain indebtedness of said defendant Company to them as trustees, which mortgage is dated April 1, 1875, and which is executed in due form of law and is recorded in Los Angeles, and San Bernardino and Ventura

Counties, in which said lands are situated, and constitutes a cloud upon the title of your orator.

XVII.

Your orator further alleges that said lands above described are naturally timbered or wooded lands and valuable for the timber and wood thereon; and that defendants herein, while claiming and pretending to own some interest in said lands, at various and divers times during the last five years, at many and divers times to your orator unknown, have unlawfully entered upon said lands, chopped down the timber and trees thereon, then the property of your orator, and carried away such timber and trees and converted the same to their own use, the amount and value of which is unknown to your orator, and are now removing from said lands wood cut thereon, and threatening to chop down other trees on said land, and unless enjoined will do so, to the great and irreparable injury of your orator.

XVIII.

Your orator further shows that the amount in controversy in this suit exceeds the sum or value of five thousand dollars, exclusive of interest and costs.

XIX.

Your orator is informed and believes, and so alleges the fact to be, that defendant Southern Pacific Railroad Company, while pretending and claiming

to own some interest in said lands, at various and divers times during the past ten years to your orator unknown, by pretended contracts and conveyances has pretended to sell and convey large portions of said lands to the other defendants herein, the amount and descriptions of which are unknown to your orator, and has thus realized from wood and timber on said land large sums of money which it has appropriated and converted to its own use.

To the end, therefore, that said defendants may, if they can, show why your orator should not have the relief herein prayed, and to fully answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by the complainant, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereinafter written they are respectively required to answer, that is to say:

Said defendant Southern Pacific Railroad Company is required to state: (1) the names of all of the pretended purchasers of said lands or any portion thereof from said company; (2) the amounts and descriptions of lands so pretended to be sold; (3) all moneys realized from said defendants respectively by said Company;

(4) Each and all of said defendants are required to state the nature and extent of their pretended claim or claims to said lands.

And to the further end, therefore, that plaintiff may have that relief which it can only obtain in a court of equity, and that said defendants may answer the premises, your orator prays that, if it shall be found that commissioners, pretending to be appointed by the President of the United States for that purpose, have reported that said pretended railroad and telegraph line from Tehachapi Pass, via Los Angeles, to the Colorado River, have been constructed and completed in a good, substantial and workmanlike manner as in all respects required by said Act of March 3, 1871, heretofore referred to, and by such report that such pretended railroad has been pretended to be accepted by them or by the President of the United States, and such pretended report or reports constitute a cloud upon the title of your orator to said lands, then your orator prays that such pretended report or reports may be set aside, annulled and canceled.

And your orator further prays that said articles of consolidation and amalgamation dated August 12, 1873, between said Southern Pacific Railroad Company and said Southern Pacific Branch Railroad Company may be set aside, annulled and canceled, and that the contract of sale therein set forth, by

which the Southern Pacific Railroad Company named in said Act of Congress of March 3, 1871, purports to sell and convey to the pretended consolidated company purported to be created by such articles all its rights, grants, privileges, assets and property, and all the rights, grants, privileges, property, assets and lands granted and conferred by the United States by said Act of Congress of March 3, 1871, to the Southern Pacific Railroad Company therein named, may be set aside, annulled and canceled.

And your orator further prays that said mortgage and deed of trust executed by said Southern Pacific Railroad Company, defendant herein, to D. O. Mills and Garrit L. Lansing as trustees, may be set aside, annulled and canceled.

And your orator further prays that its title to said lands may be quieted, and that defendants and each of them be barred and estopped from having, asserting or claiming any right, title or interest therein adverse to your orator; and your orator prays that said pretended patent from the United States to the Southern Pacific Railroad Company may be set aside, canceled and annulled; and that defendants be forever enjoined from chopping down or carrying away any wood, trees or timber upon said land.

And your orator further prays that an account may be taken by and under the direction and decree

of this Honorable Court for all moneys and profits realized by said defendants from wood, timber and trees taken from said land, and for all moneys and profits realized by defendant Southern Pacific Railroad Company from the pretended sale of said lands.

And your orator further prays that, if it shall be found that any of the defendants herein are bona fide purchasers for value of any of said lands within the meaning of said Act of Congress of March 3, 1887, then your orator prays that such defendants may be protected in their title to said lands by decree of this Honorable Court, and that your orator may have judgment against defendant railroad company for the sum of two dollars and fifty cents per acre for all such lands, if any, which this Honorable Court may find to be held by defendants herein as such bona fide purchasers for value.

And your orator prays for such other and further relief as the Court may deem equitable in the premises.

Your orator waives answer under oath.

JOSEPH H. CALL,

Special Asst. U. S. Attorney and Solicitor for Com-
plainant.

W. H. H. MILLER,

Attorney General.

**Exhibit "A" to Amended Bill of Complaint in Case
No. 184.**

Articles of association, amalgamation and consolidation made and executed on this the twelfth day of August, A. D. 1873, by and between the Southern Pacific Railroad Company, of the first part, and the Southern Pacific Branch Railroad Company of the second part:

Witnesseth: That whereas, the said party of the first part heretofore, to wit, on the eleventh day of October, A. D. 1870, was duly incorporated and organized under the laws of the State of California, by the amalgamation and consolidation of the following railroad corporation theretofore existing under the laws of said State, to wit: The San Francisco and San Jose Railroad Company, the Santa Clara and Pajaro Valley Railroad Company, the Southern Pacific Railroad Company, and the California Southern Railroad Company, pursuant to Articles of Amalgamation and Consolidation of that date by them agreed upon, which articles were subsequently amended, to wit, on the eleventh day of April, A. D. 1871, by virtue of the laws of said State, whereby said corporation became duly incorporated and organized under the laws of said State for the purpose of purchasing, constructing, owning, maintaining and operating a continuous line of railroad from the

City of San Francisco in the State of California, through the City and County of San Francisco, the counties of San Mateo, Santa Clara Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego, to some point on the Colorado River in the Southwestern part of the State of California, a distance of seven hundred and twenty miles, as near as may be, also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy, in the County of Santa Clara, in said State, passing through said County and the Counties of Santa Cruz and Monterey, to a point at or near Salinas City, in said last-named County, a distance of forty-five miles, as near as may be, and also such branches to said lines as the Board of Directors of said corporation may consider advantageous to said corporation and direct to be established.

And whereas, the said party of the second part was, heretofore, to wit, on the twenty-third day of December, A. D. 1872, duly incorporated and organized under the laws of the State of California, for the purpose of purchasing, constructing, owning, maintaining, and operating a railroad from a point on the Southern Pacific Railroad (the railroad of the party of the first part) at or near Salinas City

in the County of Monterey, southeasterly to a point in Kern County, south of Tulare Lake, intersecting the San Joaquin Valley division of the said Southern Pacific Railroad; also from a point on the above described line, at or near San Miguel in San Luis Obispo County; thence in a southerly direction to a point of intersection in Los Angeles County, with the line of the said Southern Pacific Railroad running from Tehachapi Pass by way of Los Angeles to Fort Yuma, said road passing into or through the counties of Monterey, San Luis Obispo, Kern, Santa Barbara, and Los Angeles, and said roads, in the aggregate, being, as near as may be, four hundred and twenty-eight miles in length.

And whereas, said parties believe a consolidation and amalgamation of their capital stocks, debts, properties, assets, roads, telegraphs, land and franchises, will be mutually advantageous:

And whereas, more than three-fourths in value of all the stockholders in interest of each of said parties, have consented in writing to such amalgamation and consolidation upon the terms and conditions hereinafter set forth:

Now, therefore, under and by virtue of the statute of the State of California, in such case made and provided, the said parties do hereby mutually covenant and agree, each with the other, to the following articles, to wit:

Article First: Said parties do hereby amalgamate and consolidate themselves into a new corporation, under the name and style of the Southern Pacific Railroad Company, which new corporation shall continue in existence for the period of fifty years from the date of these articles;

And they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims and demands of every kind whatsoever, as well in possession as in expectancy, at law or in equity, and do grant, convey and vest the same in the said new corporation, as fully as the same are now severally held and enjoyed by them respectively, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, encumbrances, judgments, claims and charges thereon or in anywise affecting the same or any part thereof.

Article Second: The object and purpose of said new corporation shall be to purchase, construct, own, maintain and operate the several lines of railroad hereinbefore described, to wit: a line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego to some point on the Colorado River, in

the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be, also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River, passing through the counties of Los Angeles, San Bernardino and San Diego, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara in the same State, passing through said county and the counties of Santa Cruz and Monterey, to a point at or near Salinas City in said last-named county, a distance of forty-five miles, as near as may be; also a line of railroad from a point on the line thirdly above described at or near Salinas City, county of Monterey, southeasterly through said county and into Kern county, to a point south of Tulare Lake in said last named county, intersecting at said point the line of railroad first above described, a distance of one hundred and eighty miles, as near as may be; also a line of railroad from a point on the last above described line, at or near San Miguel in the county of San Luis Obispo; thence in a southerly direction through said county, the county of Santa Barbara and into the county of Los Angeles to a point of intersection with the line of railroad secondly above described to wit: the line from Tehachapi Pass by way of Los Angeles

to the Texas Pacific Railroad at or near the Colorado at or near the Colorado River, a distance of two hundred and forty miles, as near as may be; making in all fifteen hundred and nine miles, as near as may be, and such branches to said lines as the Board of Directors of said new corporation may hereafter from time to time establish.

Article Third: The Board of Directors of said new corporation shall consist of seven persons and the following named persons shall act as such Directors until their successors shall have been duly elected pursuant to the by-laws of said new corporation, hereafter to be adopted, viz: C. P. Huntington, D. D. Colton, Robert Robinson, Charles Mayne, S. T. Gage, E. N. Miller, Jr., and J. L. Willcutt.

Article Fourth: The capital stock of said new corporation shall be ninety million dollars divided into nine hundred thousand shares of one hundred dollars each, that sum being the contemplated actual cost of said railroads, including telegraph lines, rolling stock, motive power, shops, depots, etc.

Article Fifth: Each stockholder of each said parties shall have the same number of shares of the capital stock of the new corporation which he now owns and holds of the capital stock of his respective company, upon the same terms and conditions, and shall be entitled to receive from said new corporation certificates therefor, where the same has been fully paid

up, upon the surrender of the certificates now held by him, and where the same has not been fully paid up, he shall receive such other evidence of his ownership as the Board of Directors of said new corporation shall direct upon the surrender of such evidence of his ownership of such unpaid stock as he may now hold.

Article Sixth: And the said several parties of the first and second parts, each for itself, hereby sell, assigns, transfers, grants, bargains, releases and conveys to the said new and consolidated company and corporation, its successors and assigns forever all its property, real, personal and mixed of every kind and description; all its capital stock, all its interest in the shares of its capital stock subscribed but not fully paid for; all credits, effects, judgments, decrees, contracts, agreements, claims, dues and demands of every kind and description, and all rights, privileges and franchises, corporate and otherwise held, owned or claimed by said parties of the first and second parts, or either of them in possession or expectancy, either at law or in equity, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, encumbrances, claims and charges thereon, or in any wise affecting the same.

Article Seventh: The said new and consolidated company and corporation is to be liable for and shall fulfill, perform, do and pay all and each of the con-

tracts and agreements, covenants, duties, obligations, liabilities, debts, dues and demands of the said several parties of the first and second parts, but this amalgamation and consolidation shall not in any way relieve the said parties of the first and second parts, or the stockholders thereof from any and all just liabilities.

In testimony whereof, the said party of the first ——— has cause this instrument to be signed by its Vice-president (the President being absent) and its Secretary, and its corporate seal to be thereunto affixed, and the said party of the second part has caused this instrument to be signed by its President and Secretary and its corporate seal thereunto affixed, in pursuance of orders and resolutions of their several Boards of Directors, made on the twelfth day of August, 1873.

SOUTHERN PACIFIC RAILROAD COMPANY,

By DAVID D. COLTON,
Vice-president,

[Seal]

J. L. WILLCUTT,
Secretary.

SOUTHERN PACIFIC BRANCH RAILROAD COMPANY,

By B. R. CROCKER,
President.

[Seal]

By E. H. MILLER, Jr.,
Secretary.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of said Southern Pacific Railroad Company, party of the first part, to the foregoing new Articles of Association, amalgamating and consolidating, the said parties of the first and second parts hereby consents to such amalgamation and consolidation and to the said new articles of association, this twelfth day of August, A. D. 1873.

LELAND STANFORD,

CONTRACT & FINANCE CO.

Pr. W. E. BROWN,

Secy.

MARK HOPKINS,

ROBERT ROBINSON,

S. T. GAGE,

CHAS. MAYNE,

DAVID D. COLTON,

J. L. WILLCUTT,

E. H. MILLER, Jr.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said Southern Pacific Branch Railroad Company, party of the second part to the foregoing new Articles of Association, amalgamating and consolidating the said parties of the first and second parts, hereby consents to such amalgamation and consolidation, and to the said

new articles of association, this twelfth day of August, A. D. 1874.

LELAND STANFORD,
E. H. MILLER, Jr.,
ALBERT GALLATIN,
MARK HOPKINS,
E. W. HOPKINS,
C. H. CUMMINGS,
B. R. CROCKER,

State of California,
Department of State.

I, W. C. Hendricks, Secretary of the State of California, do hereby certify that I have carefully compared the annexed copy of Articles of Association, Amalgamation and Consolidation between the Southern Pacific Railroad Co., and the Southern Pacific Branch Railroad Co., with the original now on file in my office, and that the same is a correct transcript therefrom and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the 5th day of September, A. D. 1890.

[Seal]

W. C. HENDRICKS,
Secretary of State,
By H. B. Davidson,
Deputy.

[Endorsed]: No. 184. In U. S. Circuit Court, Southern Dist. of Cal. United States vs. Southern Pacific Railroad Company et al. Amended Bill. Received copy of within Amended Bill for J. D. Redding, Solicitor for Defendants in Pursuance of Rule 49 of the Circuit Court. Wm. M. Van Dyke, Clerk. Filed September 25th, 1891. Wm. M. Van Dyke, Clerk. Joseph H. Call, Sol. for Compl.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

No. 184.

UNITED STATES OF AMERICA,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
and Others,

Defendants.

Replication in Case No. 184.

Replication of the United States to the Answer of
Southern Pacific Railroad Company and Other
Defendants.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer

of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this Honorable Court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

JOSEPH H. CALL,

Special Asst. U. S. Atty., and of Counsel for Complainant.

[Endorsed]: No. 184. In the U. S. Circuit Court, Southern Dist. of Cal. United States of America, Complainant, vs. Southern Pacific Railroad Co. et al., Defendants. Rep. Filed August 2d, 1892. Wm. M. Van Dyke, Clerk. Joseph H. Call, Special Asst. U. S. Atty.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

No. 184.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COM-

PANY and D. O. Mills and Garrit L. Lansing, Trustees, The City Brick Company, Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilda L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. M. Benham, Jesse Martin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Burrell, Frederick H. Busby, A. W. Butler, H. A. Bond, William H. Carlson, V. E. Carson, B. F. Carter, Harry Chandler, Fred Chandler, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, Mrs. L. C. Chormicle, Byron O. Clark, George Claussen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Cory, Seaton T. Cull,

Stefano Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward G. Durant, Robert Dunn, Henry Elms, Fairmount Fruit Land Company, George W. Fentress, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealy, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kutschmar, Mrs. Ammoretta J. J. Lanterman, Thomas B. Lawhead, L. B. Lawson, M. Fetra, Stephen L. Leighton, John Robarts and G. L. Mesnager, Executors of

the Last Will and Testament of Miguel Leonis, Deceased, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathiason, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossie Melrose, W. E. McVay, Thomas Menzies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, North Pasadena Land and Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. H. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Packham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, William B. Ralphs, James B. Randol, C. P. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht Felipe Rivera, James Robertson, George D. Orwan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequoia, Henry C. Shearman, Henrietta Shirpser, Rebecca

Jetta Shirpser, David Shirpser, Max Shirpser, Gianbarista Sinaco, J. S. Slausson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Taggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, E. Veysett, George Vilas, Alden R. Vining, Daniel A. Wanger, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitacre, M. L. Wicks, Moye Wicks, Mrs. Jennie Wicks, Mary C. Williams, C. N. Wilson, R. N. C. Wilson, J. Youngblood and J. A. Graves,

Defendants.

Amended Answer to Amended Complaint in Case No.

184.

Now come the respondents in the above-entitled cause and for answer to the amended bill in equity, filed herein on the 26th day of September, 1891, against them, purporting to be a bill brought by the United States, by the Attorney General thereof, and signed by Joseph H. Call, as Special Assistant U. S. Attorney, and counsel for complainant, and to so much and such parts of said bill as they are advised

it is material for them to make answer unto answering, say:

I.

That said respondents aver that the Southern Pacific Railroad Company, respondent herein, is a corporation, organized and existing under and by virtue of the laws of the State of California, as hereinafter stated, and a citizen of said last mentioned state.

And the said respondents admit that the lands described in said bill were acquired by the United States of America from Mexico, in or about the year 1846, and the title to said lands was confirmed to the United States by the treaty of Guadalupe Hidalgo in the year 1848. The said respondents deny that such lands or any thereof ever since such acquisition or confirmation of title thereof have been, or at the time of, or at any time since, the filing of the bill of complaint in this suit, were or have been, or that they or any of them are now, owned by the United States by title in fee simple or otherwise; they deny that the complainant during said times or at the time of or at any time since the filing of the bill of complaint in this suit was or has been, or that it now is, in possession of said lands or any of them, and allege on the contrary that the said lands described in the said bill, long before the filing of said bill were granted by the complainant to the respondent, the Southern Pacific Railroad Com-

pany, and thereafter were and have been, for the most part, if not entirely, in its possession, or the possession of its grantees, so far as any person or party was in actual possession thereof.

II.

The said respondents admit that by an Act of Congress approved July 27, 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast"; Congress incorporated the Atlantic and Pacific Railroad Company and granted to said company to aid in the construction of a railroad and telegraph line in said Act described, a large quantity of public lands, but it avers that such grant was made on and subject to the conditions and the limitations in said act mentioned, to which said Act of Congress reference is hereby made. U. S. Stats., Vol. XIV, p. 292. The said respondents admit that sections 3 and 18 of said Act of Congress are correctly set forth and recited in said bill; but by reason of the insufficiency of said recitals, this defendant refers to the whole of said Act of Congress.

The said respondents are uninformed as to whether the said Atlantic and Pacific Railroad Company only accepted said grant, and therefore controvert the allegation on that behalf, in the bill herein contained; they admit upon information and belief

that the Atlantic and Pacific Railroad Company began to construct a railroad in the State of Missouri, but they deny that it ever proceeded to or did construct any portion of any railroad in the State of California.

And the said respondents deny that said Atlantic and Pacific Railroad Company did locate on the ground or designate upon a plat or map the whole of said line of railroad, under or in accordance with said Act, from Springfield, Missouri, by way of the points or places named in said Act, or in the time or manner provided in said Act, or otherwise, to the Pacific Ocean, and deny that it ever lawfully located, or adopted, or designated any part of said line in the State of California; and deny that on or about the — day of —, 1866, or at any other time, said company did file any such plat in the office of the Commissioners of the General Land Office, and deny that at that or any such time, any such designation or location of said line of railroad was approved by the Secretary of the Interior, and deny the odd sections of public lands on each side of said road for thirty miles were withdrawn from market or reserved, and deny that the lands in suit herein or any of them fell within the twenty mile limits of any such line or were ever lawfully withdrawn from market or reserved for or for the benefit of said Atlantic and Pacific Railroad Company; and deny that

the Atlantic and Pacific Railroad Company ever designated a line of railroad between the Colorado River and the Pacific Ocean by a map thereof filed in the office of the Commissioner of the General Land Office, or made or filed a map of definite location of a route from the Colorado River to the Pacific Ocean, whether by the most practicable or eligible route or otherwise howsoever.

The said respondents aver that the said Atlantic and Pacific Railroad Company never made any actual or definite location of its railroad in California, nor constructed any part of railroad in said State, under or according to the Act of Congress, approved July 27th, 1866, or any amendments, modifications or supplements thereto, or otherwise howsoever.

The pretended location of a route by said Atlantic and Pacific Railroad Company in California never was or became an actual or a definite location, or anything else than an attempted or pretended designation of a general route for a railroad from — Francisco to the Needles, and such pretended location or designation of route was a colorable and fraudulent location or designation of an unauthorized and impracticable line. The Secretary of the Interior never undertook to accept such pretended location or designation as anything else than a designation of a general route, and no right to or inter-

est in any public lands was or could be acquired by said Railroad Company by reason of any such attempted location or designation or any act of acceptance thereof; and the decision of a Secretary of the Interior holding that such a general route was authorized by the Act of Congress, approved July 27, 1866, was in contravention of a previous decision of a prior Secretary of the Interior to the contrary effect, and subsequently thereto and prior to the institution of this suit was reversed by the decision of a subsequent Secretary of the Interior, holding that the said Atlantic and Pacific Railroad Company was not entitled to construct or locate a line to San Francisco, which last mentioned decision still remains in full force and effect, so far as the Interior Department is concerned; and as these defendants are advised and believe, and therefore aver, the decision of a Secretary of the Interior undertaking to accept from the Atlantic and Pacific Railroad Company a designation of a route for a railroad upon the route referred to, was unauthorized and void, and in violation of the rights acquired by and vested in the Southern Pacific Railroad Company.

These respondents ask leave to refer to said decisions, and to file copies thereof herein, if deemed necessary.

Respondents admit and aver that the greater part, but not all the lands in suit herein are situated with-

in twenty miles of the pretended line of general route of said Atlantic and Pacific Railroad from San Francisco to the Needles, and the greater part, but not all thereof are situated within twenty miles of the Southern Pacific Railroad and that all thereof are within thirty miles of said Southern Pacific Railroad.

The said respondents deny that the said Atlantic and Pacific Railroad Company was authorized by said Act, or any other Act of Congress to locate or construct a line of railroad from the crossing of the Colorado River to San Francisco; they are advised and believe, and therefore aver, that under said Act of Congress the respondent, the Southern Pacific Railroad Company, alone was authorized to construct a line of railroad from the crossing of the Colorado River to San Francisco, and to acquire lands under said Act of Congress along and opposite said line, and that the only right which the Atlantic and Pacific Railroad Company ever acquired to construct any line of railroad in the State of California was the right to construct a road from the crossing of the Colorado River by the most practicable and eligible route to the Pacific Ocean, which route was not on the line pretended to be designated by the said Atlantic and Pacific Railroad Company, but to the southerly thereof, and through the San Geronio Pass to the Pacific in the vicinity of San Pedro.

III.

The said respondents admit that by section 23 of an Act of Congress, approved March 3, 1871 (U. S. Stat., vol. 16, p. 573), entitled "An Act to incorporate the Texas and Pacific Railroad Company, and to aid in the construction of its road and for other purpose," it was provided as follows:

"Sec. 23. That, for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Techachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California, by the Act of July twenty-seven, eighteen hundred and sixty-six; provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company."

IV.

The said respondents admit that by the Act of Congress, approved July 6, 1866, entitled "An Act to forfeit the lands granted to the Atlantic and Pacific Railroad Company, to aid in the construction

of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for other purposes," all the lands and rights to lands in California theretofore granted or conferred upon said Atlantic and Pacific Railroad Company were declared forfeited and restored to the public domain. They pray leave to refer to said act, but they deny that the same in any wise operated to forfeit or resume or restore to the public domain any lands as against these respondents. They admit and aver that no part of said Atlantic and Pacific Railroad had at the time of the passage of said Act of 1866, or has at any time since been constructed in the State of California.

V.

That said respondents admit that they claim ownership in themselves and their grantees of the lands described in the bill of complaint, and they admit that they claim the same, and aver that they acquired and became entitled to said lands, under and by virtue of the said Act of Congress of March 3, A. D. 1871, and the grant to the Southern Pacific Railroad Company therein contained, and they admit that they claim and they aver the fact to be, that the said Southern Pacific Railroad Company duly accepted the said grant and the terms and conditions thereof, and duly designated and located the route

and line of its road between the points in that behalf mentioned in said Act and within the time and manner in said Act provided on that behalf, such designation and location being made by map or plat thereof, which it filed in the office of the Commissioner of the General Land Office on the 3d day of April, 1871, and they pray leave to refer to said map or plat when the same shall be produced in this suit. They aver that such map or plat was duly accepted by the Secretary of the Interior as designating the line of its road between the points mentioned in said Act and in accordance with said Act of Congress, and for twenty years and over the Interior Department held and conclusively adjudged that the grant to said Southern Pacific Railroad Company under said Act became effective and attached to the lands granted thereby and involved in this suit, on the 3d day of April, 1871, and during all that period the transactions between the complainant and the said Southern Pacific Railroad Company were based upon that claim by the railroad company, and its acceptance and adoption by the complainant; and the transactions between said railroad company and the other defendants in respect to lands involved in this suit, were and have been based upon such action, determination and rulings of the Interior Department of the United States. And they aver that afterward maps and

plats were filed in the office of the Commissioner of the General Land Office of its line of railroad as built from a point at or near Tehachapi Pass by way of Los Angeles to the Colorado River, under and in pursuance of the provisions of said Act of March 3, 1871, such last mentioned maps and plats having been so filed on the following dates, viz.:

Section 1, May 7, 1874.

Section 2, November 13, 1875.

Section 3, July 19, 1876.

Section 4, February 28, 1877.

Section 5, December 28, 1877.

They deny that the located or designated line of route of the said Southern Pacific Railroad Company, as aforesaid, lies upon the same line as the attempted or pretended line of route, or as any lawfully designated or located line of route, of the Atlantic and Pacific Railroad Company, and deny that the lands in suit herein would be or are at any place where the designated and located line of the Southern Pacific Railroad Company aforesaid, and any lawfully designated or located line of the Atlantic and Pacific Railroad Company would be or are upon the same general line or would have intersected or intersect each other. They deny that if the Southern Pacific Railroad Company had (as it did) designated its line of route from Tehachapi Pass by way of Los Angeles to a point at or near the Colorado River,

as claimed by these respondents or between such terminal points at all, that such route would have been upon the same general line as the pretended route of the Atlantic and Pacific Railroad Company as alleged in said bill to have been located by it, or any line or route which could have been lawfully designated or located by said Atlantic and Pacific Railroad Company under the Act of Congress of July 27, 1866, above referred to or otherwise.

They deny that any line or route of the Atlantic and Pacific Railroad Company has ever been lawfully located or designated in the State of California, or any limits of the grant for such company, ever lawfully fixed or in any wise defined or ascertained and deny that the lands in suit fell or fall within any limits of any grant to the Atlantic and Pacific Railroad Company. They deny the allegation in said bill contained that none of said lands were covered by the grant to the Southern Pacific Railroad Company, and that none of said lands were of the category of lands which were to be granted to said company, and each of them, and aver the contrary thereof.

And these respondents further show that upon the filing by said Southern Pacific Railroad Company of the map or plat of its line on said 3d day of April, 1871, as hereinbefore stated, the Secretary of the Interior, under date of April 3, 1871, directed the

Commissioner of the General Land Office to withdraw the granted lands along the route of said railroad as designated on said map from pre-emption, private entry and sale, and the Commissioner of the General Land Office under date of April 21st, 1871, issued instructions to the Registers and receivers of the proper United States District land offices in California to withdraw from sale or location, pre-emption or homestead entry all the odd numbered sections of public lands within thirty miles of the said line of said railroad, and these respondents aver that all the lands mentioned in the bill of complaint in this suit which was public lands at the date of such orders for withdrawal, were thereupon withdrawn according to the said instructions. Certified copies of said orders of withdrawal are hereto annexed and made part of this answer, marked Exhibit "A," a certified copy of the official diagram defining and marking the twenty and thirty mile limits opposite said railroad is herewith filed and made part of this answer marked Exhibit —.

These respondents aver that the line of route of the Southern Pacific Railroad through said lands had been duly located, and the lands granted to it by said 23d section of the said Act of March 3, 1871, had been duly withdrawn from market for the benefit of the respondent, the Southern Pacific Railroad Company, before the said Atlantic and Pacific Rail-

road Company attempted or pretended to designate or locate its general route or line for its road through or opposite to the said lands, or any part of such general route.

And these respondents aver that the respondent herein, the Southern Pacific Railroad Company, under and in fulfillment of the provisions of the said Acts of Congress hereinbefore cited, duly located, constructed and completed its said railroad from a point near Tehachapi Pass, by way of Los Angeles, to the Colorado River, and Commissioners appointed by the President of the United States duly reported the fact of such completion, and said railroad was from time to time duly approved and accepted by the President of the United States, and maps thereof duly filed in the General Land Office as above stated.

And these respondents ask leave to refer to and exhibit herein, certified transcripts from the Department of the Interior at Washington to show such maps and the action of said Commissioners and of the President of the United States and the Interior Department in this matter.

VI.

These respondents allege that the line of route for the said railroad from Tehachapi Pass, by way of Los Angeles, to a point at or near the Colorado River and for all the route between the terminal points named in said Act of Congress, has been lo-

cated and constructed by the Southern Pacific Railroad Company, in accordance with the said Act of Congress, and they deny that said line of route is upon the same general line as the pretended route of the Atlantic and Pacific Railroad in California, and the said respondents claim and aver that the lands described in the said bill of complaint were and are of the category of lands granted to the said Southern Pacific Railroad Company and were, and are, sections and parts of sections of odd numbers, and within the limits of said grant.

VII.

These respondents admit that the greater part, but not all of the lands in suit herein are situated within twenty miles of the pretended general or preliminary route of the said Atlantic and Pacific Railroad from San Francisco to the Needles, but they deny that they are situated within twenty miles or any other distance, of any lawfully designated or located route or line of route of said railroad company or within any lawful limits of any grant to said company, They admit that as to the actual mineral character of said lands they were in the same condition in respect to minerals in the whole of the year, A. D. 1866, that they were and have been all the time from that year down to and including the 3d day of April, 1871, but they are uninformed as to whether there were changes during such period in the knowledge



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or understanding, or general knowledge or understanding as to the mineral character thereof.

VIII.

Replying to paragraph eight of the bill of complaint these respondents deny the allegations of said paragraph and each of such allegations and aver that their claim to the lands in suit herein is legal and valid and founded upon express grant thereof to the said Southern Pacific Railroad Company for and upon a full and executed consideration from the complainant and as to some of said lands they ask leave to refer to and show a patent or patents thereof to said Southern Pacific Railroad Company from the Government of the United States legally issued and duly authenticated.

And these defendants further say, that so far as the right of way of the Southern Pacific Railroad Company one hundred feet in width on each side of its railroad from a point at or near Tehachapi Pass by way of Los Angeles to the Colorado River and its grounds for station buildings, work-shops, depots, machine-shops, switches, sidetracks, turn-tables and water stations are concerned, it claims and is entitled to the same under and by virtue of the provisions of section 23 of the Act of March 3, 1871, hereinabove referred to, which conferred upon the Southern Pacific Railroad Company of California all the rights, grants and privileges granted to said

Southern Pacific Railroad Company of California, by the Act of July 27th, 1866, including those specifically mentioned and referred to in section 2 of said last mentioned Act; and it avers that at the time the pretended line of the Atlantic and Pacific Railroad Company from San Francisco to the Needles is pretended to have been designated by a plat thereof filed in the office of the Commissioner of the General Land Office, the United States did not have full title, not reserved, sold, granted or otherwise appropriated and free from pre-emption or other claims or rights, to the said right of way one hundred feet in width on each side of said railroad of said Southern Pacific Railroad Company, or such grounds for station buildings, work-shops, depots, machine-shops, switches, sidetracks, turntables and water stations, but such right of way and lands had been reserved, granted and appropriated to and for the Southern Pacific Railroad Company and were subject to its claims and rights for the purposes above stated, and no right or claim of the Atlantic and Pacific Railroad Company present or prospective thereto or in respect thereof ever did attach or could have attached thereto or to any part thereof.

IX.

These respondents admit that they claim, and they aver the fact to be, that a line of railroad and telegraph from Tehachapi Pass by way of Los Angeles

to the Colorado River has been constructed by the Southern Pacific Railroad Company within the time, and in the manner provided by said Act of Congress of March 3, 1871, herein referred to, and that Commissioners appointed by the President of the United States have reported that such railroad was constructed in all respects in compliance with said Act and these respondents ask leave to refer to the reports of the Commissioners now on file in the Department of the Interior in Washington City and to produce and file herein certified copies of said reports. They deny that any such claims are pretenses, or are unfounded and aver that the Southern Pacific Railroad Company named in said Act of Congress of March 3, 1871, did construct the said railroad and telegraph line between said terminal points within the time and in the manner provided by said Act of Congress and deny the averments to the contrary thereof in said bill contained.

X.

These respondents admit that on or about the 2d day of December, 1865, a corporation was organized under the laws of the State of California under the corporate name and style of the Southern Pacific Railroad Company, and under a general law of said State, approved May 20, 1861, entitled "An Act to provide for the incorporation of railroad companies and the management of the affairs thereof and other

matters relating thereto." It admits that said Act is printed in the Statutes of California, 1861, at page 607 and prays to refer thereto.

XI.

These respondents admit that the said corporation, "The Southern Pacific Railroad Company" was formed for the purpose and with the corporate powers, as stated in the Articles of Incorporation, of constructing, owning and maintaining a railroad from some point on the Bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego to the town of San Diego in said State; thence eastward through said county of San Diego to the eastern line of the State of California there to connect with a contemplated railroad to the Mississippi River; and they refer to said Articles of Incorporation for the precise contents, purport and effect thereof.

XII.

These respondents aver that on or about the 11th day of October, A. D. 1870, under and by virtue of the general laws of the State of California on that behalf, the said Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, the Santa Clara and Pajaro Valley Railroad Company, corporations organized and existing under the

laws of California, entered into real, but they deny that they entered into pretended, articles of consolidation and amalgamation, consolidating and amalgamating their capital stocks, debts, property, assets and franchises under the name of the Southern Pacific Railroad Company, in the manner provided by the laws of California. They admit and aver that such articles were signed, published and filed as provided by the laws of California.

They pray leave to refer to such articles of consolidation and amalgamation, if material to any purposes of this suit, and to the laws of California authorizing the same, and to the laws of California affecting the corporations aforesaid or any of them and to the amendatory articles of the Southern Pacific Railroad Company filed ————. They deny that by any such articles or agreement of consolidation and amalgamation, or by any consolidation or amalgamation a different capital was made, any substantially new stock issued, or a new or different corporation created, but on the contrary, they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations and not a newly created corporation. They pray leave to refer to the Articles of Incorporation of the consolidating companies if in any wise material to this suit. They allege that said consolidation and amalgamation of said corporations were

authorized by the laws of California and by the laws of the United States so far as applicable, and were, and are, legal and valid, and deny all allegations in said bill to the contrary thereof; they deny that such consolidation and amalgamation was unauthorized by the laws of the State of California or without the consent of said State, or was unauthorized by the laws of the United States, or without authority from the United States, or was, or is illegal or void.

XIII.

These respondents aver that on or about the 12th day of August, 1873, under and by virtue of the laws of the State of California on that behalf, the said Southern Pacific Railroad Company as it existed after the said consolidation and amalgamation of 1870, and composed of the consolidated and amalgamated companies above referred to and the Southern Pacific Branch Railroad Company, a corporation, organized and then existing under the laws of California, formed for the purpose and with the corporate powers stated in its articles of incorporation of constructing, owning and maintaining a railroad within the State of California, did consolidate and amalgamate their capital stock, debts, property, assets and franchises under the name and style of the Southern Pacific Company and entered into articles of consolidation and amalgamation of which Exhibit "A" attached to the plaintiff's bill is a copy, and that said

articles were duly signed, published and filed as required by the laws of California. They pray leave to refer to such articles so far as material to this suit, and to the laws of California authorizing the same. They aver that such consolidation and amalgamation and such articles of consolidation and amalgamation were real and not pretended and deny that by such articles of agreement of consolidation and amalgamation, or by any consolidation and amalgamation, a new capital stock or a new or different corporation was created, or purported to be created but they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations and not a newly created corporation.

As to the contents, purport and effect of the articles of incorporation of the consolidating companies, they pray leave to refer to the same if in any wise material to this suit; and they pray leave to refer to the laws of the State of California as existing in and prior to 1873, authorizing the consolidation and amalgamation of railroad companies incorporated under the laws of that State.

These respondents deny that such articles of consolidation and amalgamation were illegal or void or unauthorized or prohibited by the laws of the State of California, or were unauthorized or prohibited by the laws of the United States or were entered into

without authority from the Congress of the United States, or without other competent authority, but on the contrary they aver that the consolidation and amalgamation of said railroad companies were made in conformity with the laws of the State of California whose action in that behalf was fully authorized and recognized by the Congress of the United States, and that such consolidation and amalgamation was and is in all respects valid.

These respondents deny that by entering into said articles of consolidation and amalgamation the said Southern Pacific Railroad Company named in the Act of Congress, of March 3, 1871, forfeited, abandoned or released to the United States all or any part of the lands granted to it by said Act of Congress or all or any rights, grants, franchises or privileges conferred by said Act, or all or any right to earn or acquire any and all lands under said Act.

XIV.

These respondents admit that the Southern Pacific Railroad Company which is defendant herein claims to have, and they aver that it has, patents issued by the United States to it in due form of law, purporting to convey and conveying to said company a portion of the lands in suit herein. It avers that said patents were real and not pretended and were duly recorded in the General Land Office before they were delivered to said company, and still remained

so of record, and since the delivery thereof, the same have been recorded in the county of Los Angeles, and ——— in the State of California.

These respondents deny that the lands thus patented are unknown to the complainant, and deny that the patents therefor were issued illegally or without authority of law or are illegal or void. On the contrary, these respondents allege that said patents are in all respects legal and valid, and they ask leave here to refer to the same, and to present and file as evidence in this suit, duly certified copies thereof, if deemed necessary.

XV.

Replying to paragraph XV of the complainant's bill these respondents admit that the defendants and respondents other than the Southern Pacific Railroad Company claim to be and they and each of them aver that they are in each and every instance, bona fide purchasers for value received, without notice, from the Southern Pacific Railroad Company, a corporation named in said Act of Congress of March 3, 1871, and they further aver that the time of the purchase in each instance by said respondents and defendants and each of them from the said Southern Pacific Railroad Company is set forth in Exhibit "B" hereto attached and made part of this answer, and also copies of the deeds and parties to the deeds and contracts of sale and the contents thereof are

hereto attached and marked Exhibit "G" and "H," and made a part of this answer. That in said Exhibit "B" is also given the date and day of each purchase made by said defendants and respondents and each of them. That at the time the respondents other than the Southern Pacific Railroad Company purchased said lands as are set forth in said Exhibit "B" said Southern Pacific Railroad Company the vendor, at that time, was the owner and seised in fee of said lands and said respondents entered into the possession of the said lands all of which are involved in this suit under said purchase and the consideration in each instance paid by the said respondents to the said Southern Pacific Railroad Company, which appears in each instance opposite the name of each respondent in said Exhibit "B," was a bona fide one and was paid truly and in a bona fide manner and without notice at the time of said payment or at any time prior thereto in each instance. And said respondents other than the Southern Pacific Railroad Company aver that they have no knowledge as to which, if any, of the correspondents and codefendants herein claim any right in the lands in suit, or any part or parcel thereof, under or by virtue of an Act of Congress approved March 3, 1887 (24 Stat. 556), referred to in the bill of complaint.

XVI.

These respondents admit that the respondents, D.

O. Mills and Garrit L. Lansing, have a mortgage or deed of trust from the Southern Pacific Railroad Company for the above-described lands to secure the payment of certain indebtedness of said defendant railroad company, and that said mortgage is dated April 1, 1875, and is executed in due form of law, and is recorded in Los Angeles and San Bernardino and Ventura Counties, California, where the same has been of record since 1875, but they deny that complainant has any title to said lands or any part thereof which can be clouded or injuriously or otherwise affected thereby.

XVII.

They admit that the lands described in said bill are to a considerable extent naturally timbered or wooded lands and valuable for the timber and wood thereon. While admitting that they claim but denying that they pretend to own an interest in said lands these defendants deny that they or their grantees have ever unlawfully entered on said lands or unlawfully chopped down any timber or trees thereon and deny that said lands, timber or trees or any thereof were at any time since the taking effect of the grant to the defendant, the Southern Pacific Railroad Company above referred to, the property of the complainant in this suit. They admit and aver that the Southern Pacific Railroad Company and its grantees have at various and divers times carried away timber and

trees from said lands and applied the same to their own use and are now removing from said land wood cut thereon and are intending to and unless enjoined therefrom will chop down other trees on said land, but they deny that any such acts were, are or will be in any wise unlawful or have resulted or will or could result in any injury to the complainant.

XVIII.

They admit that the amount in controversy in this suit exceeds the sum or value of five thousand dollars exclusive of interest and costs.

XIX.

They admit and aver that the defendant, the Southern Pacific Railroad Company, while claiming (but not pretending) to own an interest in said lands, has at various and divers times during the past ten years by actual (but not pretended) contracts and conveyances sold and conveyed (but not pretended to sell or convey) large portions of said lands to other of the defendants herein, and by itself and its grantees has realized from wood and timber on said lands considerable sums of money which it and they have appropriated to its and their own use.

XX.

The respondent, the Southern Pacific Railroad Company further answering states that the schedule hereto annexed, marked Exhibit "B" and made part

of this answer, is a correct schedule of all such lands claimed in this suit as the said respondent has sold prior to the filing of the bill of complaint herein, together with the names of the parties who were the purchasers, and the amounts of money received by the said respondent, upon the contract of sale to each purchaser respectively, and it avers that at the time of such sales and each of them the said defendant railroad company was the owner of the lands so sold and that it is now the owner of all of such lands which have not been so sold by it.

XXI.

And all of the respondents herein, other than the Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, admit and allege that they and each of them claim to be bona fide purchasers for value, from the said Southern Pacific Railroad Company and its grantees, also purchasers in good faith, but not otherwise, of all of the lands hereinbefore specifically described and set forth in Schedule "B" as having been sold by the respondent, the Southern Pacific Railroad Company, and that they purchased the same in good faith and for a valuable consideration, believing and still believing that at the time of their said purchase of said lands they were owned by absolute title in fee simple by said Southern Pacific Railroad Company and its said grantees.

That attached hereto and made a part of this answer are several exhibits which respondents ask may be taken as a part of the answer and referring thereto and to each and every allegation to which said exhibits are pertinent, namely:

Exhibit "A," being certified copy of a letter from Willis Drummond, Commissioner of the General Land Office, dated April 21, 1871, to the Register and Receiver, Los Angeles, California, order of withdrawal of lands within the limits of the Southern Pacific Railroad Company's Branch Line.

Exhibit "B" referred to on page 22 of the answer, being a statement, under date of July 3, 1890, of the condition on the books of the Land Department of the Southern Pacific Railroad Company of lands involved in said suit, tabulated under the following headings: "Contract No. Contract dated. Purchaser. Address. Fraction. Sec. Twp. Rge. Acres. Amount sold for. Surveyed or unsurveyed. A. & P. R. R. Co. Limits. S. P. R. R. Limits. Main, Branch Line. Selected or not selected by S. P. R. R. Co. No. and date of selection list. Costs of surveying, selecting and conveying, which is divided into three columns as follows: Surveying fees, selecting Reg. and Rec. fees, costs of conveying. Remarks."

Exhibit "C." Certified copy of list No. 21 of lands selected by the Southern Pacific Railroad Company within the granted limits of the grant made by the

23d section of the Act of Congress approved March 3, 1871, on account of the line known as the branch line of said Southern Pacific Railroad Company, which lands are situate in the Los Angeles, California, Land District.

Exhibit "D." Certified copy of list numbered 25 of lands selected by the Southern Pacific Railroad Company within the indemnity limits grant made by the 23d section of the Act of Congress approved March 3, 1871, on account of the line known as the branch line of said Southern Pacific Railroad Company, which lands are situate in the Los Angeles, California Land District; together with the designation of losses stated as a basis for such selections; also supplemental list of losses.

Exhibit "C 2." Certified copy of a letter to the Commissioner of the General Land Office, January 19th, 1889, by Henry Beard, Attorney for the Southern Pacific Railroad Company of California; also copy of certificate of deposit No. 1431 of the National Bank of the Republic, Washington, D. C., dated January 19th, 1899, by said Railroad Company of \$12.50 on account of conveying the lands located at the Los Angeles, California Land Office, at Los Angeles, California, List No. 21.

XXII.

Further answering the respondents deny that when the grant was made to the Southern Pacific

Railroad Company by the Act of Congress of March 3, 1871, it was found that the line of route which said company was required to adopt and did adopt, was upon the same general line as the route of the Atlantic & Pacific Railroad Company from Springfield, Missouri, to the Pacific.

Respondents deny that there ever was any general line of route of road adopted or designated by the Atlantic and Pacific Railroad Company in the State of California or from the Colorado River to the Pacific Ocean.

Respondents deny that the route of the said Atlantic and Pacific Railroad Company from Springfield, Missouri, to the Pacific Ocean as said grant was made to the said Company by the said Act of Congress of July 27, 1866, or by any Act of Congress, or as said route may have been in anywise located or adopted by said Company (if it ever was so located or adopted) was, or is upon the same general line as the route of the said Southern Pacific Railroad Company from Tehachapi Pass by the way of Los Angeles to the Colorado River at Fort Yuma, according to the terms of said grant to the said Southern Pacific Railroad Company, of March 3, 1871, or as said route was in fact adopted or located or at all; respondents further deny that the lands in suit herein were at the intersection of any such two lines of route or at the place where any such two routes were

or are upon the same general lines and the respondents deny that the said lands or any lands mentioned herein were excluded or deducted from the grant to the said Southern Pacific Railroad Company, under said Act of March 3, 1871.

XXIII.

And these defendants further answering, say that the Southern Pacific Railroad Company, to which the grant of lands was made by the Act of Congress of March 3, 1871, still exists under the laws of the State of California under which the same was created, and has at no time ceased to exist or surrendered or lost the rights conferred by said act and is the same corporation which is made party defendant to this bill, and that any and all amalgamations or consolidations therewith of other railroad corporations organized under the laws of the State of California have been in pursuance of and subject to the terms and provisions of the laws of the State of California, and by due and legal authority, and that the United States by constant and continued action of all branches of the Government has recognized the continued existence of the Southern Pacific Railroad Company as the grantee of lands under the Act aforesaid, and has always claimed and exercised, and still claims and exercises, against the Southern Pacific Railroad Company, notwithstanding the amalgamations from time to time of various other

railroad corporations of the State of California with the Southern Pacific Railroad Company originally constituted under the laws of said State, all the rights conferred upon the United States, and has demanded and enjoyed the benefit, and still demands and enjoys the benefit, of the performance of all the duties imposed upon the Southern Pacific Railroad Company under or by virtue of the said Act of Congress and each thereof and has claimed and exercised and still claims and exercises the rights and has demanded and enjoyed the benefit of and still demands and enjoys the benefit of the performance of the duties prescribed in said Act of Congress in respect of the line constructed by the Southern Pacific Railroad Company from a point at or near Tehachapi Pass by way of Los Angeles to the Colorado River, and is estopped in law and equity from asserting any claim that the Southern Pacific Railroad Company as now existing was not the same corporation named and designated in said Act or that the said railroad was not constructed by the grantee named therein and that it could not in any event be adjudged in favor of the United States in this suit or otherwise that the said railroad was not constructed by the grantee names in said Act or that the Southern Pacific Railroad Company as now existing is not entitled to the benefits of the grants named therein without the surrender and abandonment by the

United States of its claim to the exercise by it of the rights and privileges heretofore claimed and exercised by it, and to the enjoyment by it of the benefit of the performance of the public duties heretofore claimed and enjoyed by it in respect of the Southern Pacific Railroad Company as from time to time existing and in respect of the said road under and by virtue of the Act of Congress above referred to.

XXIV.

And these defendants further answering say, that the United States cannot now restore these defendants to the same position in respect to the land grant to the Southern Pacific Railroad Company under said Act of March 3, 1871, and its rights and claims to indemnity for lost lands which it would have had if the United States had not accepted its selections of lands in controversy in this suit and issued patents to the said defendant for such of said lands as have been patented to it, inasmuch as since the date of said patents the United States has permitted other parties to acquire claims to and has granted other parties patents for valuable lands within the indemnity limits of its road under said Act of March 3, 1871, which would prevent this company from making now as favorable indemnity selections as it might have then have made, and because the acceptance of such selections and issue of such patents

has delayed the exercise by said company of the right of selection of indemnity lands which this company would have been entitled to, and has deprived it of the use and benefit of the lands which might have been derived thereunder at times when sales thereof might have been made upon terms to the defendant far more favorable than any upon which like lands could now be sold.

XXV.

And these defendants further answering say, that heretofore and on or about the first day of April, 1875, the Southern Pacific Railroad Company executed to the defendant D. O. Mills and one Lloyd Tevis a mortgage bearing date on that day to secure a proposed issue of negotiable mortgage bonds of said Southern Pacific Railroad Company therein referred to, a copy of which mortgage is filed herewith and marked Exhibit "E," and prayed to be taken as a part of this answer. That negotiable mortgage bonds to very large amounts were from time to time between said 1st day of April, 1875, and September 25, 1891, duly issued thereunder and sold to and purchased by the public in good faith and for full and valuable consideration, and that of such bonds there are now outstanding in the hands of bona fide holders thereof for value bonds to the amount at their par value of upwards of thirty-one million dollars. That Garrit L. Lansing named as

defendant in this suit has been duly substituted as mortgage trustee thereunder in place and stead of said Lloyd Tevis named as a trustee in said original mortgage.

XXVI.

And these defendants further answering say, that heretofore and on or about the 25th day of August, 1888, and before the institution of this suit the said Southern Pacific Railroad Company executed to the Central Trust Company of New York, a corporation created, organized and existing under and by virtue of the laws of the State of New York and having its principal place of business in the City and County of New York, a further mortgage or deed of trust bearing date on said 25th day of August, 1888, to secure a proposed issue of negotiable mortgage bonds of said Southern Pacific Railroad Company therein referred to, a copy of which mortgage is filed herewith and marked Exhibit "F," and prayed to be taken as a part of this answer. That negotiable Mortgage Bonds to large amounts were from time to time subsequent to said 25th day of August, 1888, and prior to the commencement of this suit duly issued thereunder and sold to and purchased by the public in good faith, and for full and valuable consideration, and that of such bonds so issued prior to the institution of this suit bonds to the amount of six million nine hundred and eighty-one thousand

dollars are now outstanding in the hands of bona fide holders thereof for value, and that the said Central Trust Company of New York is a necessary party to this suit; and these defendants pray the like effect for the foregoing allegations as if the non-joinder of such Central Trust Company of New York as a party to this suit were specially pleaded herein.

XXVII.

And these defendants further answering say, that being required so to do by the United States, said Southern Pacific Railroad Company has from time to time paid the following fees and charges to the United States upon and in respect of the lands in controversy in this suit, that is to say: the sum of six thousand one hundred and thirty-five and 34-100ths (\$6,135.34) dollars as and for surveying and registers and receivers and surveying fees required by the United States in respect of said lands, and that the United States could not in any event or under any circumstances be entitled to recover, maintain or assert any claim to the said lands or cancel or have canceled the patents heretofore issued to said company in respect thereof until it should have repaid to said railroad company the amounts above mentioned with interest and in all other respects restored the company to the like position in all respects which it occupied at the time when such selections of said lands by the company were accepted

and approved and at the time when the patent therefor was issued to it as aforesaid by the United States.

XXVIII.

The respondents deny all and all manner of unlawful combination and confederacy with which they are by the said bill charged, without this, that any other matter, cause or thing in the complainant's said bill of complaint contained, material or necessary for these respondents to make answer unto, but not herein and hereby well and specifically answered, confessed, traversed avoided or denied, it is true to the knowledge or belief of these respondents, all of which matters and things these respondents are ready and willing to aver, maintain, and prove, as this Honorable Court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH D. REDDING,

Solicitor and of Counsel for Respondents.

HARVEY S. BROWNE, R.

Of Counsel for Respondents.

[Endorsed]: No. 184. Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America, Complainants, vs. S. P. R. R. Co. and others, Respondents. Amended Answer. Recd. copy hereof (except exhibits) May 31, 9—. Joseph H. Call, Spl. Asst. U. S. Atty.

Received May 31st, 1893. Wm. M. Van Dyke, Clerk.
Filed Jun. 12, 1893. Wm. M. Van Dyke, Clerk.
Joseph D. Redding, Solicitor for Respondents, 33-37
Chronicle Building, San Francisco, Cal.

*In the Circuit Court of the United States, Ninth Cir-
cuit, Southern District of California.*

Case No. 184.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COM-
PANY and D. O. Mills and Garrit L. Lansing,
Trustees; the City Brick Company, Atlantic
and Pacific Fibre Importing and Manufac-
turing Company, Limited; Julius Abraham-
son, Hugo Abrahamson, Mrs. Jesus Ord de
Andrade, Mrs. Thomas Allison, Mrs. Mary
Backman, Mrs. Matilda L. Barber, Henry A.
Barclay, E. T. Barber, Thomas N. Beck, A.
N. Benham, Jessie Martin Blanchard, E. N.
Blood, Ira H. Bradshaw, B. B. Briggs, Philo-
mena T. Bunnell, Frederick H. Busby, A. W.
Butler, H. A. Bond, William H. Carlson,
William H. Carlson, V. E. Carlson B. F. Car-
ter, Benjamin F. Carter, Harry Chandler,
Fred Chandler, Walter S. Chaffee, J. N.

Chapan, F. O. Christensen, Mrs. L. C. Chormiele, Byron O. Clark, George Claussen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Corey, Seaton T. Cull, Stefano Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward G. Durant, Robert Dunn, Henry Elms, Fairmont Land and Water Company, Farming and Fruit Land Company, George W. Fentrees, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealey, Frederick Kenworthy, Richard Kichline, Joseph

Kurtz, Charles Kutschmar, Mrs. Ammoretta J. Lanterman, T. B. Lawhead, L. B. Lawson, Lawson M. La Fetra, Stephen L. Leighton, John Robarts and George L. Mesnager, Executors of the last Will and Testament of Miguel Leonis, deceased, George Loomis, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathiason, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossie Melrose, W. E. Mc Vay, Thomas Mensies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, North Pasadena Land and Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Packham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James

Robertson, George D. Rowan, S. D. Savave, Jacob Scherer, George W. Seifert, Luciano Sequois, Henry C. Shearman, Henrietta Shирpser, Rebecca Jetta Shирpser, David Shирpser, Max Shирpser, Gianbatista Sinaco, J. S. Slau-son, J. Wallen, Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strath-earn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Taggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysset, George Vilas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitacre, M. L. Wicks, Moyer Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, Robert N. C. Wilson, J. Youngblood and Jack-son A. Graves.

Defendants.

Decree in Equity Filed July 19, 1894, in Case No. 184.

This cause, having been regularly set for to-day, was on this 25th day of June, 1894, duly heard, in open court.

The plaintiff appeared by Mr. George J. Denis, United States Attorney, and Mr. Joseph H. Call, Special Attorney. The defendants appeared by Mr.

William F. Herrin, Mr. L. E. Payson and Mr. Joseph D. Redding, their solicitors. Mr. D. L. Russell and Mr. Horace Bell also appeared, as solicitors for the executors of the estate of Miguel Leonis, deceased, defendants.

The testimony having been taken and all the evidence introduced, and the cause having been duly argued and submitted, it is by the Court now

Ordered, adjudged and decreed, that the United States of America is the owner, by title in fee simple absolute, of all the sections of land designated by odd numbers in townships three (3) and four (4) north ranges five (5), six (6) and seven (7) west; township one (1) north, ranges sixteen (16), seventeen (17) and eighteen (18) west; township six (6) and south, three-fourths of township seven (7) north, ranges eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18) and nineteen (19) west. Also all of the sections of land designated by odd numbers, as shown by the public surveys, embraced within the townships from number two (2) north to number five (5) north, both numbers included, and ranges from number eight (8) west to number eighteen (18) west, both numbers included except sections twenty-three (23) and thirty-five (35) in township four (4) north, range fifteen (15) west, and except sections one (1), eleven (11) and thirteen (13) in township three (3)

north, range fifteen (15) west; also the unsurveyed lands within said area which will be designated as odd-numbered sections when the public surveys of the United States shall have been extended over such townships. All the lands are herein described as of San Bernardino Base and Meridian, and are situated in the State of California.

And the defendants are, and each of them is, forever enjoined and restrained from chopping upon or carrying from the said lands any trees, timber or wood, and from claiming or asserting any right title or interest in or to the said lands or any thereof.

It is further ordered, adjudged and decreed, that each and every patent heretofore issued by the United States to the Southern Pacific Railroad Company in pursuance of the act of Congress approved July 27, 1866 (14 Stats. 292), and the act entitled "An act to incorporate the Texas and Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March 3, 1871 (16 Stats. 573), and either of said acts, and all acts amendatory and supplemental to either thereof, purporting to convey any of the lands hereinbefore described, to said Southern Pacific Railroad Company, is null, void and vacated.

It is further ordered, adjudged and decreed that each and every patent which has heretofore issued by the United States to the defendants or to any of

them, in pursuance of the pre-emption, homestead or any other general land law of Congress, is excepted from and in no wise affected by the provisions of this decree nor shall this decree in any wise affect any right which the defendants or any of them other than the said Southern Pacific Railroad Company now have or may hereafter acquire in, to, or respecting any of the lands hereinbefore described, in virtue of the act of Congress entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," approved March 3, 1887; nor shall this decree in any wise affect any right which the United States may have to hereafter recover from said Southern Pacific Railroad Company the ordinary government price for any of said lands patented to said company which the Secretary of the Interior may determine have been sold by said company to either or any of the defendants herein in good faith, and which may be patented to such bona fide purchasers in pursuance of said act of March 3, 1887, if any such there be; nor shall this decree in any wise affect any right, title or interest which the defendant, Southern Pacific Railroad Company now had or may hereafter acquire to any right of way for one hundred feet in width on each side of the main track of its road, to station buildings, work-shops, depots, machine-shops,

switches, sidetracks, turntables, water stations, and all grounds necessary for the same.

And it is further ordered, adjudged and decreed that the plaintiff have and recover its costs of this suit taxed at 1924.05 dollars.

Done and signed this 19th day of July, 1894.

ROSS,

District Judge.

Decree entered and recorded July 19th, 1894.

WM. M. VAN DYKE,

Clerk.

[Endorsed]: No. 184. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et al. Final Decree. Filed Jul: 19, 1894. Wm. M. Van Dyke, Clerk.

Mandate of Supreme Court U. S., Filed January 7, 1898, in Case No. 184.

UNITED STATES OF AMERICA—ss.

The President of the United States of America, to
the Honorable the Judges of the Circuit
[Seal] Court of the United States for the
Southern District of California, Greeting:

Whereas, lately in the United States Circuit Court of Appeals for the Ninth Circuit, in a cause between The Southern Pacific Railroad Company et al., ap-

pellants, and the United States, appellee, wherein the decree of the said United States Circuit Court of Appeals, entered in said cause on the 24th day of June, A. D. 1895, is in the following words, viz.:

“This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of California, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed.”

—as by the inspection of the transcript of the record of the said United States Circuit Court of Appeals which was brought into the Supreme Court of the United States, by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October in the year of our Lord one thousand eight hundred and ninety-seven, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said United States Circuit Court of Appeals in this cause be, and the same is hereby, affirmed in all respects as to the Southern Pacific Railroad Company as well as to the trustees in the mortgage exe-

cuted by that company, and also as to the other defendants, subject, however, to the right of the United States to proceed in the Circuit Court to a final decree as to those defendants.

And it is further ordered that this cause be, and the same is hereby, remanded to the Circuit Court of the United States for the Southern District of California.

October 18, 1897.

You, therefore, are hereby commanded that such proceedings be had in said cause, as according to right and justice, and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 21st day of December, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY.

Clerk of the Supreme Court of the United States.

[Endorsed]: No. 184. Supreme Court of the United States. No. 71, October Term, 1897. The Southern Pacific R. R. Co. et al. vs. The United States. Mandate. Filed Jan. 7, 1898. Wm. M. Van Dyke, Clerk.

Case No. 184.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY and D. O. Mills and Garrit L. Lansing, Trustees; the City Brick Company, Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited; Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilda L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. N. Benham, Jessie Martin Blanchard, E. N. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Bunell, Frederick H. Busby, A. W. Butler, H. A. Bond, William H. Carlson, William H. Carlson, V. E. Carlson B. F. Carter, Benjamin F. Carter, Harry Chandler, Fred. Chandler, Walter S. Chaffee, J. N. Chapan, F. O. Christensen, Mrs. L. C. Choricke, Byron O. Clark, George Claussen, Clarence T. Cleve, Nichilas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Corey, Seaton T.

Cull, Stefano Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward G. Durant, Robert Dunn, Henry Elms, Fairmount Land and Water Company, Farming and Fruit Land Company, George W. Fentress, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson. John J. Jones, A. S. Joseph, John Kenealey, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kutschmar, Mrs. Ammoretta J. Lanterman, T. B. Lawhead, L. B. Lawson, Lawson M. La Fetra, Stephen L. Leighton, John Robarts and George L. Mesnager, Exec-

utors of the last Will and Testament of Miguel Leonis, deceased, George Loomis, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathison, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossie Melrose, W. E. McVay, Thomas Mensies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, North Pasadena Land and Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano,, John J. Packham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogsin, A. W. Potts, Layfayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Henry C. Sherman, Henrietta Shirpser, Rebecca Jette Shirpser, David Shirpser, Max Shirp-

ser, Gianbatista Sinaco, J. C. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Teggert, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysset, George Vilas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitacre, M. L. Wicks, Moya Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, Robert N. C. Wilson, J. Youngblood and Jackson A. Graves.

Defendants.

Decree Filed August 5, 1898, in Case No. 184.

This cause coming on further to be heard in open court this 5th day of August, A. D. 1898, in pursuance of a mandate of the Supreme Court of the United States, filed herein on January 7th, A. D. 1898, by which mandate it was adjudged that the decree of this court passed and entered on the 19th day of July, A. D. 1894, "be and the same is hereby affirmed in all respects as to the Southern Pacific Railroad Company, as well as to the trustees in the mortgage executed by that company, and affirmed also

as to the other defendants, subject, however, to the right of the United States to proceed in the Circuit Court to a final decree as to those defendants."

And whereas, on said January 7, 1898, upon motion of Mr. Joseph H. Call, Special Assistant United States Attorney, further proceedings in this cause against the defendants other than defendants, Southern Pacific Railroad Company and D. O. Mills and G. L. Lansing, trustees, were dismissed without prejudice as to certain tracts of land, and at the same time the United States by their said attorney, moved for a further decree against the defendants other than said defendants Southern Pacific Railroad Company and D. O. Mills and Gerrit L. Lansing as to the balance of the lands described in the bill of complaint and the matter of said motion having come on to be heard, and Mr. William F. Herrin and Mr. William Singer, Jr., having appeared as counsel for the defendants, and Mr. Joseph H. Call having appeared as counsel for the United States and the matter having been argued and submitted to the Court and the Court being duly advised in the premises, doth now order, adjudge and decree as to the rights and interests of defendants other than Southern Pacific Railroad Company and D. O. Mills and Gerrit L. Lansing, trustees, as follows:

First. That the United States are the owners by title in fee simple absolute of the following described

land, subject to the right of defendant George Loomis, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant George Loomis is now and was on March 3, 1887, a citizen of the United States and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of Section 5, of the act of Congress approved March 3, 1887, entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands, said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of Section 5, of said act of Congress of March 3, 1887, said land being described as follows, to wit:

NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, S. $\frac{1}{2}$ of NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$, S. $\frac{1}{2}$ of NW. $\frac{1}{4}$, and S. $\frac{1}{2}$ of sec. 15, Tp. 3 N., R. 16 W.

S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and frac. S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of Sec. 7, Tp. 3 N., R. 15 W.

SE. $\frac{1}{4}$ of sec. 7, Tp. 3 N., R. 15 W.

Frac. SW. $\frac{1}{4}$ of sec. 7, Tp. 3 N., R. 15 W.

NE. $\frac{1}{4}$ of sec. 7, Tp. 3 N., R. 16 W.

NW. $\frac{1}{4}$ of sec. 7, Tp. 3 N., R. 16 W.

SE. $\frac{1}{4}$ of sec. 7 Tp. 3 N., R. 16 W.

SW. $\frac{1}{4}$ of sec. 7, Tp. 3 N., R. 16 W.

W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of sec. 9, Tp. 3 N., R. 16 W.

Lots 1, 2, 3, and 4 of Sec. 17, Tp. 3 N., R. 16 W.

NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 21, Tp. 3 N., R. 16 W.

Frac. NE. $\frac{1}{4}$ of sec. 1, Tp. 3 N., R. 17 W.

Frac. NW. $\frac{1}{4}$ of sec. 1, Tp. 3 N., R. 17 W.

SE. $\frac{1}{4}$ of sec. 1, Tp. 3 N., R. 17 W.

SE. $\frac{1}{4}$ of sec. 1, Tp. 3 N., R. 17 W.

Second. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of the defendant the Pacific Coast Oil Company, its heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

The defendant Pacific Coast Oil Company is now and was on March 3, 1887, a citizen of the United States and that it is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of Section 5, of the act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of Sec-

tion 5, of said act of Congress of March 3, 1887; said land being described as follows, to wit:

NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ and lots 1, 2, 3, and 4 of sec. 19, Tp. 3 N., R. 15 W.

Third. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant Jackson A. Graves, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Jackson A. Graves is now and was on March 3, 1887, a citizen of the United States and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of section 5, of the act of Congress approved March 3, 1887, entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5, of said act of Congress of March 3, 1887; said land being described as follows, to wit:

All of frac. sections 3, 5 and 7; all of sec. 9; N. $\frac{1}{2}$ and SE. $\frac{1}{4}$ of sec. 17, Tp. 5 N., R. 10 W. All of frac. sec. 1; frac. N. $\frac{1}{2}$ and SE. $\frac{1}{4}$ of sec. 3; E. $\frac{1}{2}$

of sec. 11, Tp. 5 N., R. 11 W. All of sections 13, 15, 21, 23, 25 and 27; E. $\frac{1}{2}$ of sec. 33; all of sec. 35, Tp. 6 N., R. 11 W.

All of frac. sections 1, 3, 5, and all of sections 9, 11, 13, 15, 17, 21, 23, 27 and 33, Tp. 6 N., R. 12 W.

S. $\frac{1}{2}$ of sec. 9; All of sections 17, 19, 21, and 29; frac. sec. 31, and all of sec. 33, Tp. 7 N., R. 11 W. W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ and SW. $\frac{1}{4}$ of sec. 11; all of sec. 13; Frac. sec. 19; all of sections 23, 25, 29, 33 and 35, Tp. 7 N., R. 12 W. All of sec. 25, Tp. 7 N., R. 13 W.

Fourth. That the United States are the owners by title in fee simple absolute of the following described land subject to the right of defendant Mrs. Mary L. Gould, her heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Mrs. Mary L. Gould is now and was on March 3, 1887, a citizen of the United States and that she is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of Section 5, of the Act of Congress approved March 3, 1887, entitled, "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States

thereto upon complying with the provisions of section 5, of said Act of Congress of March 3, 1897; said land being described as follows, to wit:

NW. $\frac{1}{4}$ of sec. 31, Tp. 2 N., R. 12 W.

Fifth. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant M. W. Stimson, his heirs, executors or assigns to purchase said land upon certain terms and conditions, viz;

That defendant M. W. Stimson, is now and was on March 3, 1887, a citizen of the United States and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of section 5, of the act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5, of said Act of Congress of March, 1887, said land being described as follows, to wit:

NE. $\frac{1}{4}$ of sec. 35, Tp. 7 N., R. 14 W.

SE. $\frac{1}{4}$ of sec. 35, Tp. 7 N., R. 14 W.

Sixth. That the United States are the owners by title in fee simple absolute of the following described

land subject to the right of defendant Charles M. Stimson, his heirs, executors, or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Charles M. Stimson is now and was on March 3, 1887, a citizen of the United States and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of section 5, of the act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5, of said act of Congress of March 3, 1887; said land being described as follows, to wit:

NW. $\frac{1}{4}$ of sec. 35, Tp. N., R. 14 W.

Seventh. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant Daniel D. Brunk, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Daniel D. Brunk is now and was on March 3, 1887, a citizen of the United States and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad

Company within the meaning of section 5, of the act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5, of said act of Congress of March 3, 1887, said land being described as follows, to wit:

W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of sec. 31, Tp. 2 N., R. 12 W.

Eighth. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant Stefano Cuneo, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Stefano Cuneo is now and was on March 3, 1887, a citizen of the United States and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of section 5, of the act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure

a patent from the United States thereto upon complying with the provisions of section 5, of said Act of Congress of March 3, 1887; said land being described as follows, to wit:

All of frac. sec. 33, Tp. 4 N., R. 15 W.

Ninth. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant Gianbtista Suraco, otherwise known as Gianbtista Sinaco, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Gianbtista Suraco is now and was on March 3, 1887, a citizen of the United States and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of section 5, of the act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5, of said act of Congress of March 3, 1887; said land being described as follows, to wit:

All of sec. 29, Tp. 4 N., R. 15 W.

Tenth. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant William H. Carlson, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant William H. Carlson is now and was on March 3, 1887, a citizen of the United States and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of Section 5, of the Act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of Section 5, of said Act of Congress of March 3, 1887; said land being described as follows, to wit:

All of frac. sec. 19, Tp. 4 N., R. 15 W.

NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and lots 1, 2, 3, 4 and 5 of sec. 13, Tp. 4 N., R. 16 W.

Eleventh. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant Thomas F. Mitchell, his heirs, executors or assigns,

to purchase said land upon certain terms and conditions, viz.:

That defendant Thomas F. Mitchell is now and was on March 3, 1887, a citizen of the United States and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of section 5, of the Act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5, of said Act of Congress of March 3, 1887; said land being described as follows, to wit:

Frac. E. $1\frac{1}{2}$ of sec. 3, Tp. 4 N., R. 14 W.

Twelfth. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant Ramon Perea, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Ramon Perea is now and was on March 3, 1887, a citizen of the United States and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Com-

pany within the meaning of section 5, of the Act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5, of said Act of Congress of March 3, 1887; said land being described as follows, to wit:

All of sec. 27, Tp. 5 N., R. 16 W.

Thirteen. That defendant Jackson A. Graves is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of section 4, of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled "An act to provide for the extension of the time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

SW. $\frac{1}{4}$ of sec. 17; all of frac. sec. 19; all of sec. 21; all of sec. 27, Tp. 5 N., R. 10 W. SW. $\frac{1}{4}$ of sec. 3; all of frac. sec. 5; all of sec. 9; W. $\frac{1}{2}$ of sec. 11, Tp. 5 N., R. 11 W. All of frac. sec. 1, Tp. 5 N., R. 12 W., W. $\frac{1}{2}$ of sec. 33, Tp. 6 N., R. 11 W.

Fourteenth. That defendant D. M. Sutherland is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of section 4, of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said lands having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

SE. $\frac{1}{4}$ of sec. 27, Tp. 5 N., R. 9 W. W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of sec. 29, Tp. 5 N., R. 10 W.

Fifteenth. That defendant Clarence T. Cleve is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands within the meaning of section 4, of said Act of Congress of March 3, 1887, and within

the meaning of the Act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

NW. $\frac{1}{4}$ of sec. 15, Tp. 5 N., R. 11 W.

Sixteenth. That defendants Peter Hamilton and Mrs. Thomas Allison, are bona fide purchasers from and under defendant, the Southern Pacific Railroad Company of the following described lands within the meaning of section 4, of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes," said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendants having purchased said land from and under said company in good faith; the title of said defendants and of their heirs, grantees and assigns to said lands is

hereby confirmed; said land being described as follows, to wit:

All of sec. 35, Tp. 7 N., R. 13 W.

Seventeenth. That defendants, William Ferguson and James Hamilton, are bona fide purchasers from and under defendant the Southern Pacific Railroad Company of the following-described lands within the meaning of section 4, of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendants having purchased said land from and under said company in good faith; the title of said defendants and of their heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

All of sec. 27, Tp. 7 N., R. 13 W.

Eighteenth. That said defendant, Ira H. Bradshaw, is a bona fide purchaser from and under defendant, the Southern Pacific Railroad Company, of the following-described lands within the meaning of section 4, of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the

extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

NE. $\frac{1}{4}$ of sec. 15, Tp. 5 N., R. 11 W.

Nineteenth. That said defendants, Peter Cook, M. L. Wicks and Alexander Cook, are bona fide purchasers from and under defendant, the Southern Pacific Railroad Company of the following-described lands within the meaning of section 4, of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendants having purchased said land from and under said company in good faith; the title of said defendants and of their heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

Sec. 1, Tp. 6 N., R. 13 W.

Twentieth. That defendant, Mary L. Gould, is a bona fide purchaser from and under defendant, the Southern Pacific Railroad Company of the following-described lands within the meaning of section 4, of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of her heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

Lot 2 in SW. $\frac{1}{4}$; E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ and W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of sec. 31, Tp. 2 N., R. 12 W.

W $\frac{1}{2}$ of SE. $\frac{1}{4}$ of sec. 25, Tp. 2 N., R. 13 W.

E $\frac{1}{2}$ of SE. $\frac{1}{4}$ of sec. 25, Tp. 2 N., R. 13 W.

Twenty-first. That defendant, Will D. Gould, is a bona fide purchaser from and under defendant, the Southern Pacific Railroad Company of the following-described lands within the meaning of section 4, of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the exten-

sion of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

NE. $\frac{1}{4}$ of sec. 25, Tp. 2 N., R. 13 W.

NW. $\frac{1}{4}$ of sec. 25, Tp. 2 N., R. 13 W.

Twenty-second. That defendant, James M. Hait, is a bona fide purchaser from and under defendant, the Southern Pacific Railroad Company, of the following-described lands, within the meaning of section 4, of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of sec. 31, Tp. 2 N., R. 12 W.

Twenty-third. That defendants, Richard Dillon and John Kenealy, are bona fide purchasers from and under defendant, the Southern Pacific Railroad Company of the following-described lands, within the meaning of section 4, of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendants having purchased said land from and under said company in good faith; the title of said defendants and of their heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

Lots 3 and 4 and S $\frac{1}{2}$ of SW. $\frac{1}{4}$ of sec. 21, Tp. 2 N., R. 14. W.

Twenty-fourth. That defendants, J. Garber and McH. Pierce, are bona fide purchasers from and under defendant, the Southern Pacific Railroad Company of the following-described lands, within the meaning of section 4, of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents

and for other purposes": said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendants having purchased said land from and under said company in good faith; the title of said defendants and of their heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of sec. 25, Tp. 5 N., R. 13 W.

Twenty-fifth. That defendant, Nathan Cole, Jr., is a bona fide purchaser from and under defendant, the Southern Pacific Railroad Company of the following-described lands, within the meaning of section 4, of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

N. $\frac{1}{2}$ of sec. 13, Tp. 5 N., R. 11 W.

Twenty-sixth. That defendant, Jacob Harps, is a bona fide purchaser from and under defendant,

the Southern Pacific Railroad Company, of the following-described lands, within the meaning of section 4 of said act of Congress of March 3, 1877, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

Frac. SW. $\frac{1}{4}$ of sec. 21, Tp. 3 N., R. 15. W.

Twenty-seventh. That defendants A. W. Potts and J. F. Holbrook are bona fide purchasers from and under defendant, the Southern Pacific Railroad Company, of the following-described lands, within the meaning of section 4, of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents or for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendants having purchased said land from and under said company

in good faith; the title of said defendants and of their heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of sec. 17, Tp. 2 N., R. 13 W.

Twenty-eighth. That defendant, Pablo Lopez, is a bona fide purchaser from and under defendant, the Southern Pacific Railroad Company, of the following-described lands, within the meaning of section 4, of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

Lots 1, 2, 5 and 6, of sec. 1, Tp. 2 N., R. 15 W.

Twenty-ninth. That defendant, Jesse Martin Blanchard is a bona fide purchaser from and under defendant, the Southern Pacific Railroad Company, of the following-described lands, within the meaning of section 4, of said act of Congress of March 3,

1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to the Southern Pacific Railroad Company, and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of his heirs, grantees and assigns is hereby confirmed; said lands being described as follows, to wit:

Fract. SW. $\frac{1}{4}$ of sec. 17, Tp. 2 N., R. 13 W.

Thirtieth. That defendant, Richard Dillon, is a bona fide purchaser from and under defendant, the Southern Pacific Railroad Company of the following-described lands within the meaning of section 4, and of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to the said Southern Pacific Railroad Company and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of his heirs, grantees and assigns to said lands is hereby

confirmed; said lands being described as follows, to wit:

E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and lots 1 and 2 in NE. $\frac{1}{4}$ of sec. 29, Tp. 2 N., R. 14 W.

Thirty-first. That defendants, Harry Chandler and Fred Chandler are bona fide purchasers from and under defendant, the Southern Pacific Railroad Company, of the following-described lands within the meaning of section 4, of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendants having purchased said land from and under said company in good faith; the title of said defendants and of their heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

NW. $\frac{1}{4}$ of sec. 33, Tp. 2 N., R. 14 W.

Thirty-second. That Miguel Leonis, lately deceased, was a bona fide purchaser from and under defendant, the Southern Pacific Railroad Company of the following-described lands, within the meaning of section 4, of said act of Congress of March 3, 1887, and within the meaning of said act of Congress

of March 2, 1896, said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said Miguel Leonis having purchased said land from and under said company in good faith; the title of said Miguel Leonis, and of his heirs, executors and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ and SW. $\frac{1}{4}$ of sec. 29; all of sec. 31, Tp. 6 N., R. 12 W.; all of frac. sec. 7, S. $\frac{1}{2}$ of sec. 15; NW. $\frac{1}{4}$ W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ and E $\frac{1}{2}$ of SE. $\frac{1}{4}$ of sec. 17; all of sections 21, 23 and 25, Tp. 6 N., R. 13 W.; all of sec. 1; NE. $\frac{1}{4}$ of sec. 11; and N. $\frac{1}{2}$ of sec. 13, Tp. 6 N., R. 14 W.

Thirty-third. That defendant, James B. Randol, is a bona fide purchaser from and under defendant, the Southern Pacific Railroad Company, of the following-described lands, within the meaning of section 4, of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to the Southern Pacific Railroad Company, and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of

his heirs, grantees and assigns is hereby confirmed; said lands being described as follows, to wit:

All of sec. 25, and the S. $\frac{1}{4}$ of sec. 35, Tp. 6 N., R. 12 W.

All of said lands being north and west of San Bernardino Base and Meridian, California.

It is further ordered, adjudged and decreed that nothing in the original decree entered in this cause on July 19, 1894, shall be construed to enjoin the defendant bona fide purchasers from asserting title to any of the said lands to which rights are by this decree adjudged them.

It is further ordered, adjudged and decreed that this decree shall not be construed as determining the character of any of the lands described herein with respect to minerals, the title to which is not by this decree confirmed, nor shall it in any wise affect the jurisdiction of the land department of the United States to determine such character of any of said lands, the title to which is not hereby confirmed.

It is further ordered, adjudged and decreed that each party shall pay his own costs in the matter of this motion for further decree.

ROSS,
Circuit Judge.

Decree entered and recorded August 5th, 1898.

WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 184. In U. S. Circuit Court, Southern District of California, United States vs. Southern Pacific Railroad Co. et al. Decree. Filed Aug. 5, 1898. Wm. M. Van Dyke, Clerk. Joseph H. Call, Spl. U. S. Atty.

**Mandate of Supreme Court U. S. Filed April 1, 1902,
in Case No. 184.**

UNITED STATES OF AMERICA,—ss.

The President of the United States of America,

To the Honorable, the Judges of the
[Seal] Circuit Court of the United States for
the Southern District of California,
Greeting:

Whereas, lately in the United States Circuit Court of Appeals for the Ninth Circuit, in a cause between The United States, appellant, and The Southern Pacific Railroad Company, George Loomis et al., appellees, wherein the decree of the said Circuit Court of Appeals, entered in said cause on the 9th day of October, A. D. 1899, is in the following words, viz.:

“This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of California, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed.”

—as by the inspection of the transcript of the record of the said United States Circuit Court of Appeals, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas in the present term of October, in the year of our Lord one thousand nine hundred and one, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said United States Circuit Court of Appeals in this cause be, and the same is hereby affirmed, except as to the lands standing in the name of Jackson A. Graves, and so to those lands be, and the same is hereby reversed.

And it is further ordered that this cause be, and the same is hereby, remanded to the Circuit Court of the United States for the Southern District of California for further proceedings in conformity with the opinion of this court. January 27, 1902.

You, therefore, are hereby commended that such further proceedings be had in said cause, in conformity with the opinion and decree of this Court as according to right and justice, and the laws of the

United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 19th day of March, in the year of our Lord one thousand nine hundred and two.

JAMES H. McKENNEY,

Clerk of the Supreme Court of the United States.

[Endorsed]: No. 184. Supreme Court of the United States. No. 25, October Term, 1901. The United States vs. The Southern Pacific R. R. Co., George Loomis et al. Mandate. Filed Apr. 1, 1902. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

No. 184.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, ATLANTIC AND PACIFIC FIBRE IMPORTING AND MANUFACTURING COMPANY, LIMITED, JACKSON A. GRAVES and Others,

Defendants.

Decree Filed September 8, 1902, in Case No. 184.

This cause coming on further to be heard for final decree as to certain defendants, in open court, this eighth day of September, A. D. one thousand nine hundred and two, in pursuance of a mandate of the Supreme Court of the United States issued on the nineteenth day of March, A. D. one thousand nine hundred and two, and Mr. Joseph H. Call, special assistant United States attorney, appearing for the United States, and Mr. William F. Herrin and Mr. William Singer, Junior, the counsel and attorney respectively, appearing for the defendants; and the Court being duly advised in the premises;

It is by the Court now ordered, adjudged and decreed that the United States of America is the owner by title absolute and in fee and unencumbered, of the lands hereinafter described, and defendants, Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, a corporation organized and created under the laws of Great Britain, and Jackson A. Graves, have no right, title, estate or interest, or lien in or upon said lands, or any thereof, and they and their servants, agents, employees and successors in interest, are forever enjoined and restrained from having or claiming to have any right, title, interest, estate or lien in or upon said lands, or

any thereof, adverse to the United States, said lands being described as follows, to wit:

All of fractional sections three, five and seven; all of section nine; north half and southeast quarter of section seventeen; township five north, range ten west. All of fractional section one; fractional north half and southeast quarter of section three; east half of section eleven; township five north; range eleven west. All of sections thirteen, fifteen, twenty-one, twenty-three, twenty-five, and twenty-seven; east half of section thirty-three; all of section thirty-five; township six north, range eleven west.

All of fractional section one, three, five, and all of sections nine, eleven, thirteen, fifteen, seventeen, twenty-one, twenty-three, twenty-seven and thirty-three, township six north, range twelve west.

South half of section seven; south half of section nine; all of sections seventeen, nineteen, twenty-one and twenty-nine; fractional section thirty-one, and all of section thirty-three, township seven north, range eleven west. West half of southeast quarter and southwest quarter of section eleven; all of section thirteen; fractional section nineteen; all of sections twenty-three, twenty-five, twenty-nine, thirty-three and thirty-five, township seven north, range twelve west. All of section twenty-five, township seven north, range thirteen west.

Southwest quarter of section seventeen; all of fractional section nineteen; all of section twenty-one; all of section twenty-seven; township five north, range ten west. Southwest quarter of section three; all of fractional section five; all of section nine; west half of section eleven; township five north, range eleven west. All of fractional section one, township five north, range twelve west.

West half of section thirty-three, township six north, range eleven west.

All of said lands being situated north and west of the San Bernardino Base and Meridian, in Los Angeles County, State of California; and all patents issued by the United States for any of said lands, are hereby annulled.

It is further ordered, adjudged and decreed, that the United States have and recover from defendants, Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, and from Jackson A. Graves, its costs, taxed at ——— dollars, and that execution issue therefor after sixty days from date hereof.

OLIN WELLBORN,

Judge.

Decree entered and recorded September 8th, 1902.

WM. M. VAN DYKE,

Clerk.

[Endorsed]: No. 184. U. S. Circuit Court, Southern District of Cal. United States vs. Southern Pacific Railroad Company. Decree. Filed Sep. 8, 1902. Wm. M. Van Dyke, Clerk. Joseph H. Call, for Plaintiff. William Singer, Jr., for Defendants.

Clerk's Certificate to Parts of Record in Case No. 184.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing 95 typewritten pages, numbered from 1 to 95, both inclusive, to be a full, true and correct copy of the following parts of record in the cause entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 184, viz.: Amended bill, filed September 25, 1891; answer presented May 31, 1893, and ordered filed and filed June 12, 1893; replication, filed August 2, 1892; final decree, filed July 19, 1894; mandate of the Supreme Court, filed January 7, 1898; further decree, filed August 5th, 1898; mandate of the Supreme Court, filed April 1, 1902, and further decree, filed September 8th, 1902, as the same appear on file and of record in my office in said cause.

Attest my hand and the seal of said Circuit Court, this 27th day of August, A. D. 1904.

[Seal]

WM. M. VAN DYKE,

Clerk.

[Endorsed]: No. 184. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et al. Certified Copy of Parts of Record. No. 1114. U. S. Cir. Ct., So. Dist. Cal. The United States vs. Southern Pacific R. R. Co. No 1114. Complainant's Exhibit "D." Leo Longley, Special Examiner. Filed Jul. 1, 1905. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

Complainant's Exhibit "E."

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GERRIT L. LANSING, Trustees, and the CENTRAL TRUST COMPANY OF NEW YORK,

Defendants.

Bill in Case No. 600.

To the Judges of the Circuit Court of the United States, for the Southern District of California:

The United States of America, by the attorney-general thereof, and George J. Denis, United States

Attorney, and Joseph H. Call, Special Assistant United States Attorney, bring this, their bill of complaint against the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California, D. O. Mills and Gerrit L. Lansing, trustees, each a resident and citizen of the State of California, residing at San Francisco in said State, the Central Trust Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York.

I.

And thereupon your orators allege that since the year 1846 the United States have been, and still are, the absolute owners by title in fee simple, and in the possession of, the lands described in Plaintiffs' Exhibit "A" hereto annexed and made a part hereof.

II.

Your orators further show: That by the Act of Congress approved July 27th, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company and granted to said company, to aid in the construction of said railroad, a large amount of lands in the State of California and other states and territories,

and to the whole of which said Act your orators refer. (See United States Statutes, Vol. 14, p. 292.)

Your orators further show that by section 18 of said Act, Congress authorized the Southern Pacific Railroad Company, a corporation claiming to be organized under the laws of the State of California, to connect with said Atlantic and Pacific Railroad, and to aid in its construction, and upon the condition that it would make such connection, agreed to make to said Southern Pacific Railroad Company a grant of lands upon the same terms, conditions and limitations as were granted to the said Atlantic and Pacific Railroad Company.

III.

Your orators further show unto the Court, and allege that by the Act of Congress approved March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes" (see U. S. Stats., Vol. 16, pp. 573-9), Congress incorporated and created the Texas Pacific Railroad Company and granted to said company, to aid in the construction of said railroad a large amount of land in the State of California, and other states and territories, and to the whole of which said act your orators refer.

Your orators further show that said Atlantic and Pacific Railroad Company duly accepted said grant,

and the terms and conditions of said act of July 27th, 1866, within the time therein required, and did designate upon plats or maps the whole of its line of route under said act, definitely locating the same from Springfield, Missouri, by way of the points and places named in said act, in the time and manner provided in said act, to the Pacific Ocean at San Buenaventura, in the State of California, and did file such plats or maps designating said line of route in the office of the Commissioner of the General Land Office within the time and in the manner provided in said act, definitely establishing the whole thereof.

That said company filed maps of definite location designating that part of its said line in the State of California in said office of the Commissioner of the General Land Office in the year 1872, and as said plats or maps were so filed in the Interior Department they were each then approved by the Secretary of the Interior, and upon the filing of such maps or plats as aforesaid the United States withdrew from market and reserved all the odd-numbered sections of land in California within thirty (30) miles of said line of route, including the lands hereinafter described, and in pursuance of orders of the Secretary of the Interior and Commissioner of the General Land Office, said withdrawal and reservation of said lands was made then of record in the General Land Office and United States District Land Offices

in California by proper plats, diagrams and maps, to all of which your orators refer.

Your orators further show to the Court that by section 23 of said act of Congress, approved March 3d, 1871, it was provided as follows: "That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California), to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions, as were granted to the said Southern Pacific Railroad Company of California by the act of July 27th, 1866, provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company."

IV.

Your orators allege that said Atlantic and Pacific Railroad Company did not, within the time or manner required by said act of Congress of July 27, 1866, nor at all, construct or complete any railroad or telegraph line, in whole or in part, within the State of California, and that by the act of Congress of July 6, 1886 (24 Stats., p. 123), all lands and

rights to lands granted to and conferred upon said Atlantic and Pacific Railroad Company, and situated within the State of California, were forfeited and resumed to the United States, and said lands were restored to the public domain, including all the odd-numbered sections of land for thirty (30) miles on each side of said line of route of said Atlantic and Pacific Railroad Company definitely fixed as aforesaid, between the eastern boundary of California and the Pacific Ocean at San Buenaventura, which lands are still owned by your orators.

Your orators further show unto the Court and allege that all the lands above described were granted by Congress to said Atlantic and Pacific Railroad Company by said act of Congress making said grant to said company, and from the date of said grant to said company, as aforesaid, until said lands and rights to lands were forfeited, as aforesaid, said company claimed to own said lands, and had a prospective, as well as a present, right to said lands; and during all of that time said lands were reserved by the United States for the benefit of said Atlantic and Pacific Railroad Company.

V.

Your orators are informed and believe that the defendants herein claim that a line of railroad and telegraph from Tehachapi Pass, by way of Los Angeles, to the Colorado River has been constructed

by the Southern Pacific Railroad Company within the time and in the manner provided by said act of Congress of March 3d, 1871, above referred to, and that said company did accept said grant and the terms and conditions thereof, and did, in the year 1874, designate its line by a plat thereof filed in the office of the Commissioner of the General Land Office, and the defendants claim that the lands herein described were granted to said company by said act, and defendants further claim that commissioners appointed by the President of the United States have reported that said railroad was constructed in all respects in compliance with said act; but your orators allege that all of said claims and pretenses are false and unfounded; and your orators show that said Southern Pacific Railroad Company named in said Act of Congress of March 3d, 1871, has not located or constructed any railroad or telegraph line, or any portion thereof, between the points named in section 23 of said act of March 3d, 1871, within the time or manner provided by said act, or at all, nor filed any plat in the Land Office, nor has any connection ever been made with said Texas Pacific Railroad at or near the Colorado River, or at any other point.

VI.

And your orators further allege that none of said lands were granted to said Southern Pacific Railroad

Company, or any of the other defendants, by said act of March 3d, 1871, and that said lands were not of the category or of the character of lands described in said act of March 3, 1871, to be granted to the company therein named; but, on the contrary, they were lands reserved and otherwise claimed, and are still owned, by the United States.

VII.

Your orators further allege that on March 3d, 1871, the Southern Pacific Railroad Company named in said act of Congress of that date, was not authorized by its charter to construct or operate the line of railroad from Tehachapi Pass, by way of Los Angeles, to the Colorado River, and thereafter and before any part of any railroad or telegraph line was located or plat definitely fixing the line filed in the Interior Department, or any railroad constructed between the points named in said section 23 of said act of March 3d, 1871, and before said grant took effect, and on August 12th, 1873, said Southern Pacific Railroad Company did, without any authority from the United States or from Congress of the United States, enter into certain articles of incorporation and consolidation with the Southern Pacific Branch Railroad Company, a corporation, thereby creating a new corporation and taking new powers under such new charter from the State of California, and thereby surrendering to the United States all the

grants, rights, franchises and privileges theretofore conferred upon the first said Southern Pacific Railroad Company.

VIII.

And your orators further allege that in the year 1874, and before any part of the railroad between the points named in said section 23 of said act of Congress of March 3, 1871, had been constructed or completed, and before said grant took effect, said Southern Pacific Railroad Company created by said articles of incorporation and consolidation, on August 12th, 1873, consolidated with other railroad companies, corporations, creating another and new corporation without any authority from the United States, and taking its new charter from the State of California, and thereby surrendering to the United States all the franchises, grants, rights and privileges, if any then remained, which had been conferred by the Congress of the United States under said act of Congress of March 3, 1871.

IX.

Your orators further show and allege that the officers of the Interior Department have erroneously and without any authority of law caused to be issued to defendant, Southern Pacific Railroad Company, patents of the United States, in due form of law, for the tracts of land described in Plaintiffs' Exhibit "A," hereto attached and made a part hereof.

That more than ninety days prior to the commencement of this suit the Secretary of the Interior demanded in writing of said Southern Pacific Company a relinquishment and reconveyance of said lands to the United States, which demand was refused and not complied with by said company.

X.

Your orators further allege that the defendants herein, and each of them, claim some interest in the said lands under and by virtue of the said act of March 3, 1871, and not otherwise. The nature and extent of such claims are unknown to your orators, but your orators allege that such claims are not based upon any legal or equitable right to such lands or any thereof.

Your orators further show that said adverse claims of said defendants hinder and embarrass your orators, and prevent the Department of the Interior from selling and otherwise disposing of said lands under the laws of the United States.

XI.

Your orators further allege that defendants herein while claiming and pretending to own some interest in said lands, are now unlawfully removing from said lands wood, timber, minerals and other valuable deposits, and unlawfully threatening to chop down other trees on said land and remove other min-

erals and valuable deposits thereon, and unless enjoined will do so, to the great and irreparable injury of your orators.

XII.

Your orators further allege that the amount in controversy in this suit, exclusive of interests and costs, exceeds the sum or value of five thousand (5,000) dollars.

In tender consideration whereof, and for as much as your orators are remediless at and by the strict rules of the common law, and can only be relieved in a Court of Equity, your orators, pray that their title to said lands described in said exhibit "A" hereto annexed may be quieted; that said pretended patents be vacated and decreed to be void, and that the defendant and each of them be forever enjoined from asserting or claiming any right, or title, to said lands adverse to your orators, and that the defendants be forever enjoined from chopping down or carrying away any wood, trees or timber upon said land, and from removing any minerals or other valuable deposits thereon.

Your orators further pray that the Court will define and determine the rights of your orators to the odd-numbered sections of land in California within the thirty-mile limits of the said line of route of said Atlantic and Pacific Railroad Company as shown by the maps of said Atlantic and Pacific Rail-

road Company on file and of record in the General Land Office and will decree that the United States are the owners in fee of said lands, as against all rights and claims of the defendants based upon or through said grants made by the United States by said Acts of Congress, approved July 27, 1866, and March 3, 1871, except the lands embraced in pending suits of your orators, against said Southern Pacific Railroad Company, described as follows:

“All of the sections of land designated by odd numbers in township three (3) and four (4) north, ranges five (5), six (6) and seven (7) west; township one (1) north, ranges sixteen (16), seventeen (17) and eighteen (18) west; township six (6), and south three-fourths of township seven (7) north; ranges eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), and nineteen (19) west; also townships from number two (2) north to number five (5) north, both numbers included, and ranges from number eight (8) west to number eighteen (18) west, both numbers included, San Bernardino Base and Meridian, California,” as to which lands no relief is sought by this bill.

Your orators pray for such other and further relief as to the Court may seem equitable, and for costs of this suit, and your orators will ever pray.

May it please your Honors to grant unto your orators a writ of subpoena issuing out of and under the seal of this Honorable Court, to be directed to the above-named defendants, the Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, trustees, the Central Trust Company of New York, and to each of the other defendants above named, commanding them on a certain day, and under a certain penalty therein to be inserted, to be and appear before your Honors, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and to good conscience, and your orators will ever pray.

Your orators expressly waive answer under oath by the defendants and each of them.

RICHARD OLNEY,

Atty. General.

JOSEPH H. CALL,

Special Asst. United States Atty.

GEORGE J. DENIS,

United States Attorney.

[Endorsed]: No. 600. In United States Circuit Court, Southern Dist., Cal. United States vs. Southern Pacific Railroad Co. Bill. Filed May 14, 1894. Wm. M. Van Dyke, Clerk. Joseph H. Call, Spl. Asst. U. S. Atty.

*In the Circuit Court of the United States, Ninth
Circuit, Southern District of California.*

No. 600.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,
D. O. MILLS and GERRIT L. LANSING,
Trustees, and the CENTRAL TRUST COM-
PANY OF NEW YORK,

Defendants.

Answer to Complaint in Case No. 600.

The joint and several answer of the Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, Trustees, and the Central Trust Company of New York, to the bill of complaint of the United States, plaintiff.

These defendants respectively, now and at all times saving to themselves all and all manner of benefit and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereto, or to so much thereof as these defendants are advised that it is

material or necessary for them to make answer to, severally answering, say:

I.

The defendants deny that since the year 1846, the United States have been and still are the absolute owners by title in fee simple, or by any title whatsoever, or in anywise or at all, or as alleged in the said bill of complaint, or have been or still are in the possession of the land described in Plaintiff's Exhibit "A" annexed to the complaint and made a part thereof.

On the contrary, defendants allege that from the year 1846, continuously and until July 27, 1866, the plaintiff was the owner in fee simple absolute, in possession, and entitled to the possession of all the lands described in Exhibit "A" annexed to the plaintiffs' bill of complaint; that on the said last-mentioned date the Congress of the United States granted a portion of said lands to the defendant, the Southern Pacific Railroad Company as is hereinafter with a description of the portion of said land so granted, particularly set forth; that as to said portion of said lands hereinafter described and particularly set forth, the defendants deny that the plaintiff is, or at any time since July 27, 1866, has been the owner in fee simple absolute or otherwise, or in any manner or at all, or in possession or entitled to the possession thereof.

The defendants allege that from the year 1846 continuously and until March 3, 1871, the plaintiff was the owner in fee simple absolute, and in possession and entitled to the possession of all the lands described in exhibit "A," other than such thereof as were granted to the defendant, the Southern Pacific Railroad Company on July 26, 1866, as aforesaid; that on March 3, 1871, the Congress of the United States granted all the lands described in the said exhibit "A," to the defendant, the Southern Pacific Railroad Company, which had not theretofore been granted to the said Southern Pacific Railroad Company by the Act of Congress of July 27, 1866, and the lands so granted to the said defendant, the Southern Pacific Railroad Company on March 3, 1871, are hereinafter particularly set forth and described.

Defendants deny that the plaintiff is, or at any time since March 3, 1871, has been the owner in fee simple absolute or otherwise, or in possession or entitled to the possession of any of the lands described in Plaintiff's Exhibit "A."

II.

The defendants admit that by an Act of Congress approved July 27, 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and

Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company, and granted to said company to aid in the construction of said railroad a large quantity of public lands; but they aver that such grant was made and subject to the conditions and the limitations in said Act mentioned, to which said Act of Congress reference is hereby made. (United States Statutes, Volume 14, page 292), and the defendants refer to the whole of said Act of Congress.

The said defendants aver that the Southern Pacific Railroad Company, one of the defendants herein, is a corporation organized and existing under and by virtue of the laws of the State of California, as hereinafter stated, and is a resident and inhabitant of the Northern District of said State and a citizen thereof.

The defendants deny that by section 18 of the said Act of Congress, the United States or Congress agreed to make a grant of lands to the said Southern Pacific Railroad Company upon the same terms, conditions and limitations as were granted to the said Atlantic and Pacific Railroad Company, or upon the condition that the Southern Pacific Company would make connection with the said Atlantic and Pacific Railroad Company. On the contrary said defendants allege that by section 18 of said Act of Congress of July 27, 1866, Congress authorized the

Southern Pacific Railroad Company to connect with the said Atlantic and Pacific Railroad Company at such point, near the boundary line of the State of California, as the Southern Pacific Railroad Company should deem most suitable for a railroad line to San Francisco, and did in direct terms make a grant of lands in the State of California to the Southern Pacific Railroad Company, and subject to the conditions and limitations therein provided.

III.

Said defendants admit that by the Act of Congress approved March 3, 1871, entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road and for other purposes," (United States Statutes, Volume 16, pages 573-579) Congress incorporated the Texas Pacific Railroad Company, and granted to said company to aid in the construction of said railroad, a large quantity of public lands; but said defendants deny that said grant ever attached to or affected any lands within the State of California, and they aver that such grant was made subject to the conditions and limitations in the said Act last mentioned, to which said Act on Congress reference is hereby made, and these defendants refer to the whole of said Act of Congress.

That said defendants deny that said Atlantic and Pacific Railroad Company duly or in anywise accepted said grant.

Said defendants deny that the said Atlantic and Pacific Railroad Company did within the time required, or in any manner or at all, designate upon plats or maps, the whole of its line or any part of its line of route under said Act of July 25, 1866, or did definitely locate the same from Springfield, Missouri, by the way of the points and places named in the said Act in the time and manner provided in said Act, to the Pacific Ocean at San Buenaventura in the State of California, or to any point on the Pacific Ocean.

Said defendants further deny that the said Atlantic and Pacific Railroad Company did file plats or maps designating said line of route in the office of the Commissioner of the General Land Office in the time and in the manner provided in the said Act, definitely establishing the whole or any part thereof; and the said defendants further deny that said Atlantic and Pacific Railroad Company did designate or locate any of its line or route in the State of California, between any points therein and deny that it ever located or adopted or designated, any part of said line in the State of California, or in any manner provided in the said Act or at all.

Said defendants deny that said Atlantic and Pacific Railroad Company filed maps of definite location, designating part of its said line in the State of California, in the said office of the Commissioner of

the General Land Office in the year 1872, or at any time or at all, and deny that as said plats or maps were so filed in the Interior Department, they were each then approved by the Secretary of the Interior, and deny that upon the filing of such maps or plats as aforesaid, the United States withdrew from market and reserved all or any of the odd-numbered sections of land in California, within thirty miles of said line of route, or including the lands hereinafter described, and deny that in pursuance of orders of the Secretary of the Interior, and the Commissioner of the General Land Office, said withdrawal or reservations of said lands was made then of record in the General Land Office and the United States District Land Office in California, by proper plats, documents and maps or in any manner or at all; the said defendants further deny that any lands in suit herein fell within the thirty mile limits of any such line, or were ever withdrawn from market, or reserved for or for the benefit of said Atlantic and Pacific Railroad Company; and deny that the Atlantic and Pacific Railroad Company ever designated a line of railroad between the Colorado River and the Pacific Ocean by a map or maps thereof filed in the office of the Commissioner of the General Land Office; or made or filed a map or maps of definite location of route or designation of route from the Colorado River to the

Pacific Ocean, whether by the most practicable and eligible route or otherwise howsoever.

Said defendants aver that the said Atlantic and Pacific Railroad Company never made any actual or general or definite or any location whatsoever of its line or route of railroad in California.

Said defendants further aver that the pretended location of a route by said Atlantic and Pacific Railroad Company in California, never was or became an actual or a definite location or designation of a general route for a railroad from San Francisco to the Needles or from the Needles to the Pacific Ocean, or from the point of crossing the Colorado River selected by said Atlantic and Pacific Railroad Company, to the Pacific Ocean, and further aver that such pretended location or designation of route was a colorable and fraudulent location or designation of a route and that such route was also upon an unauthorized and impracticable line; that the maps filed by the said Atlantic and Pacific Railroad Company in the Interior Department and in the office of the Secretary of the Interior, and in the office of the Commissioner of the General Land Office purporting to show a designation of route in the State of California, and embracing the lands in controversy, were fraudulent, spurious and manufactured, and deceived the officers of the Government and were intended so to do.

Defendants further aver that the Atlantic and Pacific Railroad Company transmitted to the office of the Secretary of the Interior on March 8th, 1872, four maps purporting to show the location of portions of the line of railroad of the Atlantic and Pacific Railroad Company: First, from San Francisco to San Miguel Mission, California; second, from a point on the western boundary line of Los Angeles, California, to a point in township seven north, range seven east, of San Bernardino Base and Meridian in said State; third, from the eastern boundary of Arizona, to the Colorado River, and fourth, from the western boundary of Texas to the western boundary of New Mexico.

That these maps and all four of them were described upon their face and by endorsements thereon, to be maps of definite location over the territory described thereon, and named therein; that the said maps above mentioned as "third" and "fourth" are the result of actual surveys and are made and prepared to a certain extent in conformity with the rules and regulations of the Interior Department issued and provided for the location of lines of route of railroads receiving land grants from the United States.

Said defendants aver that the said map of the Atlantic and Pacific Railroad Company above mentioned as "first," from San Francisco to San Miguel Mission, California, and said map above mentioned

the said map or plat bears on the face thereof, a certificate of one Uriel Crocker, as president, and said J. Blickensderfer, Jr., as chief engineer of said Atlantic and Pacific Railroad Company, certifying that the said map shows the line or route of said railroad from a point on the western boundary of the county of Los Angeles, to a point in township seven north, range seven east of San Bernardino Base and Meridian, in the State of California as definitely fixed in compliance with said Act of Congress, and that the date of the field notes thereof, are truly indicated along the line from station to station upon said map. Such statements so embodied in the said certificate upon the face of said map, were made with the like intent and purpose as the statements in the affirmation aforesaid, but were also wholly and willfully false. The said map did not show any line of route which has been definitely fixed in compliance with said Act of Congress, and did not truly indicate the dates of any field work of or on any such line of route.

The said map did not and does not show any practicable or eligible route for any railroad, but was and is a mere sham.

Said defendants further aver that the said four maps being so received together by the Interior Department upon said date, deceived the officers of the Interior Department, who acting under said decep-

tion and believing said four maps to be similar in character and each and all of them to display properly and in conformity with the regulations of the Interior Department, the true and definite location of the proposed line of railroad of the Atlantic and Pacific Railroad Company, caused a letter to be issued from the General Land Office on April 22, 1872, which letter is in the words and figures, following, to wit:

DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE.

April 22, 1872.

Registrar and Receiver, Los Angeles, Cal.

Gentlemen: "I transmit herewith a diagram showing the definite location of the Atlantic and Pacific Railroad under Act of July 27, 1866, Stat., Vol. 14, p. 292, from a point on the western boundary of Los Angeles County, to a point in T. 7 N., R. 7 E. on the San Bernardino in your district, showing also the twenty and thirty mile limits of the land grant under said Act, and you are hereby directed to withhold from pre-emption or homestead entry, private sale or location, all the odd-numbered sections falling within those limits both surveyed and unsurveyed, nor reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road was designated by filing a plat thereof in this office, which was

March 12, 1872. The even-numbered section within the twenty mile limit, you will increase in price to \$2.50 per acre and dispose of them at that ratability and only under the pre-emption and homestead laws. The even sections outside of the twenty mile limits are not affected by this withdrawal. Claims initiated by settlers under the pre-emption laws prior to the right of the road attaching March 12, 1872, are not affected by this order.

Be pleased to acknowledge the receipt of this letter without delay.

Very respectfully,

WILLIS DRUMMOND,

Commissioner."

Said defendants aver that said maps "first" and "second" last above referred to, are not maps showing the definite location of the line of railroad of the Atlantic and Pacific Railroad Company in the State of California, or in reference to any portions thereof; that they are not maps showing the general route of said Atlantic and Pacific Railroad Company in the State of California, and were not intended so to be; that the said Atlantic and Pacific Railroad Company intended that said maps should be taken and accepted as proper and sufficient maps of the definite location of the line of railroad of the said Atlantic and Pacific Railroad Company in certain portions of

the State of California, and embracing territory which includes the lands in controversy in this cause. That the said Interior Department accepted the four maps last above mentioned unaware of the fraud and deception being perpetrated upon it, or the officers thereof; and therefore caused the letter above quoted to be sent by the Commissioner of the General Land Office to the Registrar and Receiver at Los Angeles.

The said defendants further aver that said letter, in view of said deception, and said fraud, and of the true character of the said maps "first" and "second," did not and cannot operate as an order of withdrawal of any lands in the State of California for the benefit of said Atlantic and Pacific Railroad Company. The said defendants further allege that no lands ever were withdrawn in the State of California or reserved or in anywise taken out of the public domain for the benefit of the said Atlantic and Pacific Railroad Company, or against the rights of the Southern Pacific Railroad Company, one of the defendants herein, or against the rights of the other defendants.

That no rights to or interest in any public lands were or could be acquired by said Atlantic and Pacific Railroad Company by reason of any such attempted location or designation, or any act of acceptance thereof, on the part of the Interior Department.

Said defendants further aver that the said Atlantic and Pacific Railroad Company transmitted on the 15th of August, 1872, to the Interior Department, to other maps, purporting to designate the line of its railroad in the county of San Bernardino, State of California, first, from a point in township seven north, range seven east to the Colorado River, and second, from a point between the San Miguel Mission and the Los Angeles County line. That said maps are likewise spurious, fraudulent and manufactured, and do not depict or show any surveyed route or line of road between the points named of the Atlantic and Pacific Railroad Company in the State of California. That said maps depict a route wholly impracticable, ignoring the topography of the earth's surface, and not upon a route that ever was surveyed by said Atlantic and Pacific Railroad Company in the State of California, and not upon a line or route which was intended to be or could be the definite location or location of general route of the line of railroad of the Atlantic and Pacific Railroad Company; that no rights to or interest in any public lands were or could be acquired by said Atlantic and Pacific Railroad Company by reason of said maps, or attempted location or designation, or by the acceptance of any of the said maps by the Interior Department.

IV.

Said defendants further allege that in the year 1869, the said Atlantic and Pacific Railroad Company filed a map in the Interior Department purporting to show the definite location of its line of road in the State of California, from its point of crossing the Colorado River to the Pacific Ocean, which definite line of location passes through the said State of California far to the north of the lands in controversy, and did not embrace any thereof. That from said year 1869, and down to the year 1885, said Atlantic and Pacific Railroad Company continuously reiterated its claim before the Interior Department that its line of definite location in the State of California, was located by said map of 1869.

Said defendants deny that said Atlantic and Pacific Railroad Company was authorized by said Act, or any other Act of Congress to locate or construct a line of railroad from the point of crossing of the Colorado River to San Francisco. They are advised and believe, and therefore aver, that under the said Act of Congress, the defendant, the Southern Pacific Railroad Company, alone was authorized to construct a line of railroad from the point of crossing of the Colorado River to San Francisco, and to acquire lands under said Act of Congress along and opposite to said line and that the only right which the Atlantic and Pacific Railroad Company ever ac-

quired to locate or construct any line of railroad in the State of California, was the right to locate and construct a road from the crossing of the Colorado River by the most practicable and eligible route to the Pacific Ocean, which route was not on the line pretended to be designated by the said Atlantic and Pacific Railroad Company.

V.

And these defendants further aver that on July 27, 1866, all the lands described in the said exhibit "A" were vacant and unappropriated public lands, to which the United States had full title; and none of said lands had theretofore been granted, sold or otherwise disposed of, nor were any of said lands reserved, occupied by homestead settlers, or pre-empted, nor were any of said lands mineral lands, and all of said lands were then free from pre-emption or other claims or rights; and all of the said lands have ever since so remained, except as is hereinafter set forth and stated.

That by the said Act of Congress, approved July 27, 1866, the defendant, the Southern Pacific Railroad Company was authorized to connect with the Atlantic and Pacific Railroad at such point near the boundary line of the State of California, as the Southern Pacific Railroad Company should select, and construct a railroad from such point to the city of San Francisco; and to aid in the construction

thereof, the said act made a grant of lands to the defendant the Southern Pacific Railroad Company to the amount of ten odd-numbered sections per mile on each side of the line of railroad which it should adopt.

That within two years after the passage of the said Act, the defendant, the Southern Pacific Railroad Company, filed in the office of the Secretary of the Interior its acceptance of the terms, conditions and impositions of the said Act; which acceptance was in writing, under the corporate seal of the said company, and was duly executed in pursuance of the direction of its board of directors, theretofore made.

That prior to January 3, 1867, the defendant, the Southern Pacific Railroad Company, duly established the general route of the entire railroad, which it was authorized by the said act to construct, and on the said date filed in the office of its Commissioner of the General Land Office, a plat or map designating the said general route, and the entire line of the railroad, which map was thereupon duly accepted and approved by the Commissioner of the General Land Office and the Secretary of the Interior, and on March 22, 1867, the said officers withdrew all the odd-numbered sections within thirty miles of the railroad line shown upon the said plat from pre-emption and homestead entry, sales and other disposition by the United States; and that all the odd-

numbered sections within thirty miles of the said railroad line, have remained so withdrawn and reserved from pre-emption and homestead entry, sales and other disposition continuously since January 3, 1867, and down to the present time. That the said company commenced the construction of its said railroad within the time allowed therefor, and definitely located and constructed those portions thereof of more than 25 miles each extending from San Francisco to Mojave in ten several sections, prior to February 1, 1878, except that section or portion between Tres Pinos and Alcalde and definitely fixed and actually constructed that portion thereof extending from Mojave to its connection with the Atlantic and Pacific Railroad at Needles on the Colorado river, in several sections, prior to December, 1884; and all of said railroad was so completed in a good, substantial and workmanlike manner, and in all respects as required by the said Act and Acts amendatory thereof. That on August 7, 1871, the said company filed in the General Land Office and Department of the Interior a plat, duly showing the section of its railroad extending from the said commencement point to Gilroy, as the same had been definitely located and constructed, and at various different dates intermediate August 7, 1871, and December 1, 1884, filed similar plats showing all the other sections of its entire railroad from San Fran-

cisco to the Needles, as the same had been definitely located and constructed; each and all of which plats were accepted and approved by the Commissioner of the General Land Office and the Secretary of the Interior.

That commissioners duly appointed by the President of the United States for that purpose, examined the said railroad as it was completed in sections, and prior to December 27, 1884, duly reported to the President of the United States that all of the said railroad had been completed in a good, substantial and workmanlike manner, and in all respects as required by the said act.

That at the times aforesaid and when the said Southern Pacific Railroad Company filed its said map designating the line of route of its railroad, many of the odd sections within the twenty miles of the railroad line shown thereon, were granted, sold, reserved, occupied by homestead settlers, pre-empted and otherwise disposed of by the United States; and the aggregate quantity of such lands in lieu of which the said company was granted other lands by said Act, was and is more than equal to the aggregate quantity of all the odd-numbered sections beyond twenty miles and within thirty miles of the said railroad line; and all of the odd sections which were not otherwise disposed of on January 3, 1867, situated within thirty miles of the said railroad line,

were granted to the Southern Pacific Railroad Company by the said Act. And at all the times when the said railroad was definitely fixed and the plats thereof filed as aforesaid, the aggregate quantity of the odd sections within twenty miles of the definitely fixed line of railroad, which were granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of by the United States, and in lieu of which the said company was granted other lands, was and is more than equal to the aggregate quantity of all the undisposed of odd sections beyond twenty miles and within thirty miles of the said definitely fixed railroad line; and all of the odd sections which were not otherwise disposed of on January 3, 1867, situated within thirty miles from the said definitely fixed railroad line, were granted to the Southern Pacific Company by the said Act of Congress.

That the said company is, and for a long time prior to the commencement of this suit was entitled to have patents issued by the Government of the United States to it for all the lands granted to it as aforesaid, within thirty miles on each side of its said railroad line; prior to the commencement of this suit, patents were duly issued to the said company for twelve thousand three hundred and eighteen and seventy-seven one-hundredths acres of the lands de-

scribed in exhibit "A," annexed to the plaintiff's bill of complaint.

That prior to the commencement of this suit the Southern Pacific Railroad Company duly selected in lists under the direction of the Secretary of the Interior one hundred and fifty thousand and eighty-three and twenty-eight one-hundredths acres of the lands mentioned in the plaintiff's bill of complaint, lying within twenty miles of the said railroad line, and paid for costs and fees thereon exacted and collected of it by the United States, the sum of seven thousand dollars. That no part of the said sum has been tendered or repaid to the said company by the United States.

That all the lands granted to the defendant, the Southern Pacific Railroad Company, by the said Act of July 27, 1866, are particularly described and shown by Defendant's Exhibit "A," annexed to and made a part of this answer.

VI.

And these defendants further aver that on March 3, 1871, all the lands described in the exhibit "A," annexed to the plaintiff's bill of complaint, and not granted to the Southern Pacific Railroad Company by the said Act of July 27, 1866, were vacant and unappropriated public lands to which the United States had full title.

That by section 23 of the Act of Congress, approved March 3, 1871, entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," the defendant, the Southern Pacific Railroad Company was authorized to construct a railroad from a point at or near Tehachapi Pass, by way of Los Angeles to a point of the Colorado river, at or near the southeastern boundary of the State of California, along such line as the said company should adopt; and to aid in the construction thereof, the said section 23 made a grant of land to the said Southern Pacific Railroad Company, to the amount of ten sections per mile on each side of the line of railroad which it should adopt, not mineral in character, to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims and rights at the time the said company filed a plat in the office of the Commissioner of the General Land Office, designating the line of its said railroad. And the said section further provided that the Southern Pacific Railroad Company should select other lands, under the direction of the Secretary of the Interior, from the odd sections within ten miles beyond the limits of the said granted sections, in lieu of such of the said granted sections as were granted, sold, reserved, occupied by homestead settlers, or

otherwise disposed of at the date the said plat designating the line of railroad was filed in the office of the Commissioner of the General Land Office.

That the said section 23 did not, nor did the said land grant, defeat or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or of any other railroad company; except that the land grant made by it to the Southern Pacific Railroad Company conflicted with and overlapped the land grant made to the same company by the Act, approved July 27th, 1866, hereinbefore set forth, as is particularly shown by exhibit "A," annexed hereto.

That in April, 1871, the defendant, the Southern Pacific Railroad Company, filed in the office of the Secretary of the Interior, its acceptance of the terms, conditions and impositions of the said act of March 3, 1871; which acceptance was in writing under the corporate seal of the company, and was duly executed in pursuance of the direction of its board of directors, theretofore made.

That prior to April 3, 1871, the said Southern Pacific Railroad Company duly established the general route of the entire railroad, which it was authorized by the said act of March 3, 1871, to construct, and on the said date filed in the office of the Commissioner of the General Land Office, a plat or map designating the general route and line of said railroad from Te-

hachapi Pass by way of Los Angeles to Yuma ; which map was thereupon duly accepted and approved by the Commissioner of the General Land Office and the Secretary of the Interior, and on April 21, 1871, the said officers withdrew all the odd-numbered sections within thirty miles of the railroad line shown upon the said plat, from pre-emption and homestead entry, sales and other dispositions by the United States, and including that portion of the lands in controversy hereinafter described ; and all of said lands which lie within thirty miles of the said railroad line, have remained so withdrawn and reserved from pre-emption and homestead entry, sales and other disposition continuously since April 21, 1871, and down to the present time.

That the said company commenced the construction of its said railroad in the year 1871, and prior to December 28, 1877, definitely located and constructed its entire railroad from Tehachapi Pass by way of Los Angeles to Yuma, along the line of route designated by its said plat filed April 3, 1871 ; and all of said railroad was so completed in a good, substantial and workmanlike manner, and in all respects as required by the said act. That the said railroad was completed in five several sections, and plats showing the line thereof as the same was definitely located and constructed, were filed in the General Land Office and the Interior Department at various different

dates after the year 1871, and prior to December 28, 1877; each and all of which plats were accepted and approved by the Commissioner of the General Land Office and the Secretary of the Interior.

That the commissioners duly appointed by the President of the United States for that purpose, examined the said railroad as it was completed in sections, and prior to December 28, 1877, duly reported to the President of the United States that all of the said railroad has been completed in a good, substantial and workmanlike manner, and in all respects as required by the said Act.

That at all the times aforesaid when the Southern Pacific Railroad Company filed its map designating the line of route of its railroad and the said railroad was definitely fixed, many of the odd sections within twenty miles of the railroad line shown thereon, were granted, sold, reserved, occupied by homestead settlers, pre-empted and otherwise disposed of by the United States; and the aggregate quantity of such lands in lieu of which the said company was granted other lands as aforesaid, was and is more than equal to the aggregate quantity of all the undisposed of odd sections beyond twenty miles and within thirty miles of the said railroad line; and all of the odd sections which were not otherwise disposed of, on April 3, 1871, situated within thirty miles from the said railroad line, were granted to the Southern

Pacific Railroad Company by the Act of March 3, 1871.

That said company is, and for a long time prior to the commencement of this suit, was entitled to have patents issued by the Government of the United States to it, for all the lands granted to it as aforesaid within thirty miles on each side of its said railroad; and prior to the commencement of this suit patents were duly issued to the said company for thirty thousand four hundred and twenty 08/100ths acres of lands described in exhibit "A" annexed to the plaintiff's bill of complaint.

That prior to the commencement of this suit the Southern Pacific Railroad Company duly selected in lists, under the direction of the Secretary of the Interior, sixty-six thousand and eighty-one and forty-two one-hundredths acres of lands mentioned in the plaintiff's bill of complaint, lying within twenty miles of the said railroad line and eighty-eight thousand nine hundred and fifty-seven 06/100ths acres of the land described in the said exhibit "A" within thirty miles of the said railroad line and paid for costs and fees thereon exacted and collected of it by the United States the sum of nine thousand dollars. That no part of the said sum has been tendered or repaid the said company by the United States.

VII.

Said defendants admit that by the Act of Congress

approved July 6, 1886, entitled "An Act to forfeit the lands granted to the Atlantic and Pacific Railroad Company, etc." (24 Stats., p. 123), all the lands and rights to lands in California theretofore granted or conferred upon said Atlantic and Pacific Railroad Company were declared forfeited and restored to the public domain; but they deny that any lands in controversy were ever granted to the Atlantic and Pacific Railroad Company, or were ever forfeited or resumed, or restored to the public domain by any act of forfeiture or by said act of forfeiture. They admit and aver that no part of said Atlantic and Pacific Railroad had at the time of the passage of said Act of 1886, or has at any time since, been constructed in the State of California.

Said defendants deny that all of the lands above described, or any of them, or any of the lands in controversy, herein, were granted by Congress to said Atlantic and Pacific Railroad, by said Act of Congress of July 27, 1866; and they furthermore deny that from the date of said Act as aforesaid, up to any period of time, or until said Act of forfeiture, said Atlantic and Pacific Railroad Company claimed to own said lands or any thereof.

Said defendants deny that said Atlantic and Pacific Railroad Company had or claimed to have a prospective right to a present right or a prospective as well as a present right to said lands in contro-

versy. Said defendants furthermore deny that during all of said times or during any of said time, or between any of the dates mentioned, said lands were reserved by the United States for the benefit of said Atlantic and Pacific Railroad Company.

VIII.

These defendants admit that they make the claims as are set forth in subdivision V of plaintiff's bill of complaint, except that the Southern Pacific Railroad Company designated the line and filed the plat therein mentioned in the year 1871 instead of 1874; but they deny that such claims in whole or in part, are a pretense, false or unfounded, and aver that said claims are in each and every particular sincere, true, well founded and valid. And these defendants deny that the Southern Pacific Railroad Company named in the Act of Congress of March 3, 1871, has not located and constructed the railroad and telegraph line between the points named in section 23 of the said Act, within the time and manner provided in said Act; and deny that the said company has not filed a plat in the land office, nor made a connection with the Texas Pacific Railroad at or near the Colorado River, and deny that none of the said lands were granted to said Southern Pacific Railroad Company, or to any of the other defendants by said Act of March 3, 1871, or that said lands are not of the category or of the character of the lands described

in said Act of March 3, 1871, to be granted to the company therein named, and deny that said lands were reserved or otherwise claimed, or still owned, by the United States; on the contrary said defendants allege that the said lands were granted by said Act of Congress of March 3, 1871, to the said defendant the Southern Pacific Railroad Company, and were earned by the said defendant, the Southern Pacific Railroad Company by the construction of its road within the time and manner required by law, and as hereinbefore stated.

The defendants further deny that their claim or claims to the said lands hinder or embarrass the plaintiff or prevent the Department of the Interior from selling or otherwise disposing of said lands, or any part thereof; on the contrary, the defendants allege that the plaintiff has no right, title or interest whatsoever in or to said lands or any part thereof; that all of the said lands were granted and are owned by these defendants as is hereinbefore particularly set forth, and that the Department of the Interior has no authority or power to sell or in anywise dispose of said lands.

IX.

Answering paragraph VII of the plaintiff's complaint, the defendants deny the same and all thereof.

Furthermore, said defendants allege that on or about the 2d day of December, 1865, a corporation

was organized under the laws of the State of California, under the corporate name and style of the Southern Pacific Railroad Company, and under a general law of said State, approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," which Act is printed in the Statutes of California, 1861, p. 601, and pray to refer thereto; that said corporation was formed for the purpose and with the corporate power as stated in the Articles of Incorporation, of constructing, owning and maintaining a railroad from some point on the Bay of San Francisco in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego, to the town of San Diego in said State; thence eastward through said County of San Diego to the eastern line of the State of California, there to connect with a contemplated railroad to the Mississippi River; and they refer to said Articles of Incorporation for the precise contents, purport and effect thereof.

The defendants furthermore allege that on or about the 11th day of October, A. D. 1870, under and by virtue of the general laws of the State of California in that behalf, the said Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, the Santa Clara and Pajaro Valley Rail-

road Company, corporations organized and existing under the laws of the State of California, entered into articles of consolidation and amalgamation, consolidating and amalgamating their capital stocks, debts, property, assets and franchises under the name of the Southern Pacific Railroad Company, in the manner provided by the laws of California, and such articles were signed, published and filed as provided by the laws of California, and they pray leave to refer to such articles of consolidation and amalgamation material to any purposes of this suit, and to the laws of California authorizing the same, and to the laws of California affecting the corporations aforesaid, or any of them, and to the amendatory articles of the Southern Pacific Railroad Company filed.

The defendants furthermore allege that on or about the 12th day of August, 1873, under and by virtue of the laws of the State of California, on that behalf, the said Southern Pacific Railroad, as it existed after the said consolidation and amalgamation of 1870, and composed of the consolidated and amalgamated companies above referred to, and the Southern Pacific Branch Railroad Company, a corporation organized and then existing under the laws of California, formed for the purpose and with the corporate powers stated in its articles of incorporation, of constructing, owning and maintaining a

railroad within the State of California, did consolidate and amalgamate their capital stock, debts, property, assets and franchises under the name and style of the Southern Pacific Railroad Company, and entered into articles of consolidation and amalgamation, which said articles were duly signed, published and filed as required by the laws of California, and they pray leave to refer to such articles so far as material to this suit, and to the laws of California authorizing the same. They aver that such consolidation and amalgamation and such articles of consolidation and amalgamation were real and not pretended; they deny that said articles of incorporation and consolidation were entered into without any authority from the United States or from the Congress of the United States; and they deny that by such articles of agreement of consolidation and amalgamation, or by any consolidation and amalgamation, a new capital stock or a new or different corporation was created, or purported to be created, but they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations, and not a newly created corporation. As to the contents, purport and effect of the articles of incorporation of the consolidated companies, they pray leave to refer to the same if in anywise material to this suit; and they pray leave to refer to the laws of the State of Cali-

fornia, as existing prior to 1873, authorizing the consolidation and amalgamation of railroad companies incorporated under the laws of the State. The defendants furthermore deny that by said articles of incorporation and amalgamation the defendant Southern Pacific Railroad Company surrendered to the United States all or any of the grants, rights, franchises or privileges theretofore conferred upon it, or upon the Southern Pacific Railroad Company as it existed prior thereto.

X.

Answering paragraph VIII of the plaintiff's complaint, the defendants deny each and all thereof, and allege that on or about the 18th day of December, 1874, under and by virtue of the laws of the State of California, on that behalf, the said Southern Pacific Railroad Company, as it existed after the said consolidation and amalgamation of 1873, and composed of the consolidating and amalgamating companies above referred to, did consolidate and amalgamate its capital stock, its property and assets and franchises, under the name and style of the Southern Pacific Railroad Company, and entered into articles of consolidation and amalgamation; and that said articles were duly signed, published and filed as required by the laws of the State of California. They pray leave to refer to said articles, so far as material to this suit, and to the laws of California authoriz-

ing the same. They aver that such consolidation and amalgamation and such articles of consolidation and amalgamation, were real and not pretended; they deny that said articles of incorporation and consolidation were entered into without any authority from the United States or from the Congress of the United States; and they deny that by such articles of agreement of consolidation and amalgamation, or by any consolidation and amalgamation a new capital stock or a new or different corporation was created or purported to be created, but they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations, and not a newly created corporation. As to the contents, purport and effect of the articles of incorporation of the consolidated companies, they pray leave to refer to the same, if anywise material to this suit; and they pray leave to refer to the laws of the State of California, as existing prior to 1873, authorizing the consolidation and amalgamation of railroad companies incorporated under the laws of the State; the defendants furthermore deny that by said articles of incorporation and amalgamation the defendant the Southern Pacific Railroad Company surrendered to the United States all or any of the grants, rights, franchises or privileges theretofore conferred upon it, or upon the

Southern Pacific Railroad Company as it existed prior thereto.

These defendants deny that such articles of consolidation and amalgamation were illegal or void or unauthorized or prohibited by the laws of the State of California, or were unauthorized or prohibited by the laws of the United States, or were entered into without authority from the Congress of the United States, or without other competent authority; but on the contrary they allege that the consolidation and amalgamation of said railroad companies were made in conformity with the laws of the State of California, whose action in that behalf was fully authorized and recognized by the Congress of the United States, and such amalgamation and consolidation were and are in all respects valid.

XI.

Answering paragraph IX of plaintiff's complaint, the defendants deny the same and all thereof; and allege that in due course of law, and with proper authority, the Interior Department has issued and caused to be issued to the defendant the Southern Pacific Railroad Company, patents of the United States in due form, for the certain tracts of land described in Plaintiff's Exhibit "A" attached to plaintiff's bill of complaint. They aver that such patents were real and not pretended, and were duly recorded in the General Land Office before they were delivered

to said company, and still remain so of record, and did convey and confirm to said company a portion of the lands in suit herein, and since the delivery thereof the same have been recorded in the counties of Los Angeles and San Bernardino and Kern in the State of California.

XII.

Answering paragraph X of the plaintiff's bill of complaint, the defendants allege that the defendants D. O. Mills and Gerrit L. Lansing, trustees, claim to be and are trustees of certain mortgage to secure the payment of certain negotiable bonds, and claim that such bonds have been sold, issued and delivered to various persons for value, and without notice of any claims or ownership of the complainant to said lands, and they deny that such claims are unfounded, or are not based upon any legal or equitable right to such lands, but on the contrary allege that such claims are well founded and valid.

And these defendants further answering say that heretofore, and on or about the first day of April, 1875, the Southern Pacific Railroad Company executed to the defendant D. O. Mills and one Lloyd Tevis a mortgage bearing date of that day, and covering all the lands mentioned in the plaintiff's complaint here, to secure the proposed issue of negotiable mortgage bonds of said Southern Pacific Railroad Company therein referred to, a copy of which mort-

gage is filed herewith and marked Defendants' Exhibit "B," and pray to be taken as a part of this answer. That negotiable mortgage bonds to very large amounts were from time to time between said first day of April, 1875, and October 1st, 1888, duly issued thereunder and sold to persons who purchased the same in good faith and for full and valuable consideration, and that of such bonds there are now outstanding in the hands of bona fide holders thereof, for value, bonds to the amount of their par value of \$31,293,500. That said Gerrit L. Lansing named as defendant in this suit has been duly substituted a mortgage trustee thereunder, in place and stead of said Lloyd Tevis, named as trustee in said original mortgage.

XIII.

The defendants further allege that heretofore and on or about the 25th day of August, 1888, and before the institution of this suit, the said Southern Pacific Railroad Company executed to the Central Trust Company of New York, a corporation created, organized and existing under and by virtue of the laws of the State of New York, and one of the defendants named in said bill, a further mortgage or deed of trust, covering all the lands mentioned in plaintiff's complaint herein, bearing date on said 25th day of August, 1888, to secure a proposed issue of negotiable mortgage bonds of said Southern Pacific Railroad

Company therein referred to, a copy of which mortgage is filed herewith and marked exhibit "C", and prayed to be taken as a part of this answer. That negotiable mortgage bonds to large amounts were from time to time subsequent to said 25th day of August, 1888, and prior to the commencement of this suit, duly issued thereunder and sold to persons who purchased the same in good faith and for full value and valuable consideration, and that of such bonds so issued, prior to the institution of this suit, bonds to the amount of upwards of \$10,497,000 are now outstanding in the hands of bona fide holders thereof for value.

XIV.

Answering paragraph XI of plaintiff's bill of complaint these defendants deny that they are unlawfully removing from any of the land in suit, or from said lands, any wood or timber or minerals or other valuable deposits, or are unlawfully threatening to chop down other trees or any trees on said lands, or unlawfully to remove other minerals or valuable deposits thereon, and deny that unless enjoined will do so in any manner or at all, or to the great or irreparable injury of the plaintiff.

These defendants further aver that they and each of them are not residents or inhabitants of the Southern District of California, and that none of the defendants in this action are residents of or inhabitants

of the Southern District of California. On the contrary, the defendant, the Southern Pacific Railroad Company is a resident and inhabitant of the Northern District of California ; the defendant D. O. Mills is a resident and inhabitant of the State of New York and of the Southern District of New York; the defendant Gerrit L. Lansing is a resident and inhabitant of the Northern District of California.

These defendants and each of them herewith reiterate their pleas to the jurisdiction of this Court heretofore entered and against said jurisdiction.

And these defendants deny all and all manner of matter, cause or thing in the plaintiff's bill of complaint contained, material or necessary for these defendants to make answer to, and not herein well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of any of the defendants. All of which matters and thing these defendants are ready and willing to aver, maintain and prove, as this Honorable Court may direct; and these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH D. REDDING,

Solicitor for Defendants Herein Answering.

WM. F. HERRIN and

WM. SINGER, Jr.,

Of Counsel.

[Endorsed]: No. 600. U. S. Circuit Court, Ninth Circuit, So. Dist. of Cal. United States of America, Plaintiff, vs. Southern Pacific R. R. Co. et al., Defendants. Answer. Service of the within Answer is Hereby Admitted this 10th day of January, A. D. 1895. Joseph H. Call, Attorney for Compl. Filed Jan. 10, 1895. Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

No. 600.

UNITED STATES OF AMERICA,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
and Others,

Defendants.

Replication in Case No. 600.

Replication of the United States to the Answer of
Defendants.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and in-

sufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this Honorable Court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

JOSEPH H. CALL,

Special Asst. U. S. Atty. and of Counsel for Complainant.

JOSEPH H. CALL,

Special Asst. U. S. Atty. and of Counsel for Complainants.

[Endorsed]: No. 600. In the U. S. Circuit Court, Southern Dist. of Cal. United States of America, Complainant, vs. Southern Pacific Railroad Co. et al., Defendants. Due Service Hereof Admitted by Copy this 23d Jan. 1895. Joseph D. Redding, Solicitor for Said Defendant. Filed Jan. 23, 1895. Wm. M. Van Dyke, Clerk. Joseph H. Call, Special Asst. U. S. Atty.

In the Circuit Court of the United States, Ninth Circuit, Southern Division of California.

No. 600.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GERRIT L. LANSING, Trustees, and THE CENTRAL TRUST COMPANY OF NEW YORK,
Defendants.

Joint and Several Supplemental Answer in Case No. 600.

The joint and several supplemental answer of the defendants, the Southern Pacific Railroad Company, D. O. Mills, Trustee, and the Central Trust Company of New York, filed by leave of the Court to the plaintiffs' bill of complaint as amended.

These defendants, the Southern Pacific Railroad Company, D. O. Mills, Trustee, and the Central Trust Company of New York, respectively, by leave of the Court file this their joint and several answer to the plaintiff's bill of complaint as amended, and say:

1st. That on February 4th, 1896, and since the answer of the defendants was filed, the defendant

Gerrit L. Lansing died, and on March 21st, 1896, one Homer S. King was duly substituted for the said Lansing, as a trustee under the mortgage set forth in subdivision XII of the defendants' answer herein.

2d. Prior to the time plaintiff's bill of complaint was filed, the United States duly issued its patents conveying to the defendant, Southern Pacific Railroad Company the legal title to certain of the lands described in the plaintiff's bill of complaint and since the said bill was filed the United States duly issued its patents conveying to the said company the legal title to certain other lands described in the said bill of complaint, which other lands contains thirty-nine thousand nine hundred and forty-four acres.

All the lands so patented are within the limits of the land grants made to the defendant, the Southern Pacific Railroad Company by the Acts of Congress set forth in the defendants' original answer, and none of the said lands were, or are, excepted from the said grants by any cause; and all of those lands were granted to the said company by the Acts of Congress mentioned, before the said patents or any of them, issued, the said company duly selected the lands in such patent described under the direction of the Secretary of the Interior, and paid all the costs of selecting, surveying and patenting the same; and the said company was in all respects entitled thereto, at the time the said patents were re-

spectively issued. Each of the said patents issued in proper form, after the Commissioner of the General Land Office and the Secretary of the Interior had duly examined, ascertained and adjudged that the lands therein described constituted and were part and parcel of the land grant made by the said acts, not included by any exception thereto, and after the said officers had duly examined, ascertained and adjudged that such lands had been duly selected by the said company, that all costs of selecting, surveying and patenting had been paid, and that the said company was fully entitled to the issue of such patent; and each of the said patents was so issued in pursuance of the order and direction of the Secretary of the Interior and the President of the United States. Some of the said lands are within the primary limits, and the remainder thereof are within the indemnity limits, of the said land grants to the Southern Pacific Railroad Company.

Before this suit was commenced, or demand made for reconveyance to the United States of any of the lands patented as aforesaid, the defendant, Southern Pacific Railroad Company sold, and issued contracts and deeds of conveyance for fifty-seven thousand seven hundred and eleven acres of the lands conveyed to it by the said patents; the full particulars of which sales, contracts and deeds, and short particulars of the patents conveying to the said company

the lands so sold are set forth in Exhibit "A," attached to and made a part of this supplemental answer. Such sales were made, and contracts and deeds issued, to bona fide purchasers, each of whom purchased in good faith, for a valuable consideration paid, without notice or knowledge that the United States had, or claimed to have, any right, title or interest in or to the land so purchased, or any part thereof; and each of the said purchasers believed, sincerely and in good faith, that in making such purchase he was acquiring the perfect and true title to the lands purchased. All of the lands shown on Exhibit "A," hereto attached, to have been sold, or contracted for sale are, at the time this suit was brought and on March 2d, 1896, were held by bona fide purchasers.

By its Act approved March 2d, 1896, entitled: "An act to provide for the extension of the time within which suits may be brought to annul land patents, and for other purposes," Congress provided that no patent to any land held by a bona fide purchaser should be vacated or annulled, and confirmed the right and title conveyed by such patents; and these defendants are advised and believe, and so say, that if it were in anywise true (which it is not) that the lands patented and sold as aforesaid were reserved from the lands granted to the defendant, Southern Pacific Railroad Company by the said Acts of Con-

gress, as in the plaintiff's bill of complaint alleged, still this suit cannot be maintained, but is barred as to all such patented and sold lands, by the provisions of the first section of the said Act of March 2d, 1896.

3d. Prior to the commencement of this suit the plaintiffs demanded of it, and the defendant, Southern Pacific Railroad Company, paid to the plaintiffs the sum of three thousand five hundred dollars for the costs of surveying and patenting the said lands patented to it as aforesaid; which sum the plaintiffs have retained and appropriated, and they have not at any time requested a reconveyance to the United States of any of the said patented lands.

Wherefore these defendants pray as in their original answer herein; and that this suit be abated as to all lands described in Exhibit "A," attached hereto—and for general relief in respect to the matters herein set forth.

WM. SINGER, Jr.,

Attorney for Said Defendants.

WM. F. HERRIN,

Counsel for the Said Defendants.

State of California,

City and County of San Francisco,—ss.

H. E. Huntington, being duly sworn, deposes and says: That he is the vice-president of the Southern Pacific Railroad Company, one of the defendants

named in the foregoing supplemental answer; that the said supplemental answer is true of his own knowledge, except as to the matters and things therein stated on information or belief, and as to such matters that he believes it to be true.

H. E. HUNTINGTON.

Sworn to and subscribed before me July 14th, 1896.

[Seal]

E. B. RYAN,

Notary Public.

[Endorsed]: No. 600. U. S. Circuit Court, Ninth Circuit, Southern District of Cal. The United States vs. The Southern Pacific Railroad Co. Supplemental Answer. Filed Jul. 27, 1896. Wm. M. Van Dyke, Clerk. Wm. Singer, Jr., Rooms 61-2 Union Trust Building, San Francisco, Cal., Atty. for ———.

Mandate of Supreme Court U. S. in Case No. 600.

UNITED STATES OF AMERICA—ss.

The President of the United States of America, to
the Honorable the Judges of the Circuit

[Seal] Court of the United States for the
Southern District of California, Greeting:

Whereas, lately in the United States Circuit Court of Appeals for the Ninth Circuit, in a cause between The Southern Pacific Railroad Company, D. O. Mills and Homer S. King, Trustees, and The Central Trust

Company of New York, Appellants, and The United States, Appellee, wherein the decree of the said Circuit Court of Appeals, entered in said cause on the 2d day of October, A. D. 1899, is in the following words, viz.:

“This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of California and was argued by counsel. On consideration whereof it is now here ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby affirmed.”

And whereas, lately in said Circuit Court of Appeals in a cause between The United States, Appellant, and The Southern Pacific Railroad Company, D. O. Mills and Homer S. King, Trustees, and the Central Trust Company of New York, appellees, wherein the decree of the said Circuit Court of Appeals, entered in said cause on the 9th day of October, A. D. 1899, is in the following words, viz.:

“This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of California, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby affirmed,” as by the inspection of the transcript of the record of the said

United States Circuit Court of Appeals, which was brought into the Supreme Court of the United States by virtue of an appeal taken by The Southern Pacific Railroad Company et al., and a cross-appeal taken by the United States, agreeably to the Act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and one, the said cause came on to be heard before the said Supreme Court, on the said transcript of record on appeal and cross-appeal and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said United States Circuit Court of Appeals in this cause be, and the same is hereby reversed.

And it is further ordered that this cause be, and the same is hereby remanded to the Circuit Court of the United States for the Southern District of California, with directions to enter a decree quieting the title of the United States to an equal, undivided moiety in all alternate sections within the place or granted limits of the Atlantic and Pacific Railroad Company in California, so far as those limits conflict with the like limits of the Southern Pacific Railroad Company, excepting therefrom those lands in respect to which there has been same prior adjudica-

tion, and to dismiss the bill as to all other lands without prejudice to any future suit or action.

January 6, 1902.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this Court as according to right and justice, and the laws of the United States, ought to be had, the said appeals notwithstanding.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 19th day of March, in the year of our Lord one thousand nine hundred and two.

JAMES H. McKENNEY,

Clerk of the Supreme Court of the United States.

[Endorsed]: No. 600. Supreme Court of the United States. Nos. 18 & 24, October Term, 1901. The Southern Pacific R. R. Co., et al., vs. The United States. The United States vs. The Southern Pacific R. R. Co., et al. Mandate. Filed Apr. 1, 1902. Wm. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

No. 600.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees, and the CENTRAL TRUST COMPANY of New York,

Defendants.

Decree in Case No. 600.

This cause coming on for final decree this 2 day of July, 1902, in open court, in pursuance of a mandate issued by the Supreme Court of the United States on the 19th day of March, 1902, and the United States appearing by Mr. Joseph H. Call, Special Assistant United States Attorney, and the defendants appearing by Mr. William F. Herrin and Mr. William Singer, Jr., their counsel and attorney, respectively, and the court being duly advised in the premises, it is by the Court now;

Ordered, adjudged and decreed, that the United States is the owner by title in fee simple, absolute

and unincumbered of an equal undivided moiety of the following described lands, and defendants Southern Pacific Railroad Company, and D. O. Mills and Homer S. King, as trustees, and the Central Trust Company of New York as Trustee, and their servants, agents and successors in interest hereby are forever enjoined and restrained from having or claiming to have any title, interest, or estate adverse to the United States in and to said moiety in said lands of which the United States is the owner, as aforesaid, to wit: In all alternate sections of land, designated by odd numbers, within the primary or place limits of the grant to the Atlantic and Pacific Railroad Company, within the State of California, made by the act of Congress, approved July 27, 1866, as fixed by the map of definite location of said company, filed in the office of the Commissioner of the General Land Office in the year one thousand eight hundred and seventy-two, so far as those limits conflict with the primary or place limits of the grant to the Southern Pacific Railroad Company made by said Act of Congress of July 27, 1866, and acts amendatory thereof, as adjusted to the line of road shown upon the maps filed in the Interior Department on January 7, 1885, and accepted by the Secretary of the Interior on September 8, 1897; excepting therefrom all such sections and parts of sections of land designated by odd numbers as

fall within the following described townships and parts of townships, to wit: Townships three (3) and four (4) north, ranges five (5), six (6), and seven (7) west; township one (1) north, ranges sixteen (16), seventeen (17) and eighteen (18) west; townships six (6), and south three-fourths of township seven (7) north, ranges eleven (11) twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18) and nineteen (19) west; also townships from number two (2) north to number five (5) north, both numbers included, and ranges from number eight (8) west to number eighteen (18) west, both numbers included, San Bernardino Base and Meridian, California, as to which excepted lands no relief is sought by this bill; and it is further

Ordered, adjudged and decreed, that as to all other lands embraced by the bill, that the bill be, and hereby is, dismissed without prejudice to any further suit or action, and it is further

Ordered, adjudged and decreed, that the respective parties plaintiff and defendant pay their own costs.

July 2, 1902.

ROSS,

Circuit Judge.

Decree entered and recorded July 2d, 1902.

WM. M. VAN DYKE,

Clerk.

[Endorsed]: No. 600. U. S. Circuit Court, 9th Circuit, Southern District of Cal. United States of America vs. Southern Pacific Railroad Co. et al. Final Decree. Filed Jul. 2, 1902. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm. Singer, Jr., N. E. Corner Second and Mission Streets, San Francisco, Cal., Atty. for ———.

Clerk's Certificate to Parts of Record in Case No. 600.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing 60 type-written pages, numbered from 1 to 60, both numbers inclusive, to be a full, true and correct copy of the following papers of record in the case entitled The United States of America, Complainant, vs. The Southern Pacific Railroad Company et al., Defendants, No. 600, viz.: bill of complaint, filed May 14th, 1894; answer to bill of complaint, filed January 10th, 1895; replication, filed January 23d, 1895; supplemental answer to bill of complaint, filed July 27th, 1896; mandate of Supreme Court, filed April 1st, 1902; and final decree, filed July 2d, 1902; as the same appear on file and of record in my office.

Attest my hand and this seal of the Circuit Court, this 27th day of August, A. D. 1904.

[Seal]

WM. M. VAN DYKE,

Clerk.

[Endorsed]: No. 600. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et al. Certified Copy Bill of Complaint. Answer. Replication. Supplemental Answer. Mandate. Final Decree. No. 1114.

U. S. Cir. Ct., So. Dist., Cal. The United States vs. Southern Pacific R. R. Co. No. 1114. Complainant's Exhibit "E." Leo Longley, Special Examiner. Filed Jul. 1, 1905. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division.

Case No. 1114.

UNITED STATES,

Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,
and Others,

Defendants.

Stipulation as to Evidence.

It is stipulated and agreed by and between the parties to this case, subject to all valid objections as to competency and relevancy, as follows:

Subdivision I.

Item 1. That all Acts of Congress and laws of the State of California, whether of public or private, general or special nature, and all official acts and decisions of the Commissioner of the General Land Office and Secretary of Interior relating to the Southern Pacific Railroad Company or to the Atlantic and Pacific Railroad Company or affecting the rights of either of said companies or of the United States, and all decisions of the supreme Court of the United States reported in the United States Reports relating to or affecting the rights of either of said companies, in so far as relevant and material to the issues and controversies in this case, shall be deemed before this Court for judicial notice.

Subdivision II.

Item 2. The Act of Congress, approved on July 27th, 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the State of Missouri and Arkansas to the Pacific Coast," is admitted in evidence, by reference to the same as printed in volume 14 of the United States Statutes at Large, pages 292, and following.

Item 3. Within due time, the Atlantic and Pacific Railroad Company filed maps designating its line of route with the Pacific Railroad Company mentioned in the Act of Con-

gress referred to in Item 2 hereof, assented to, and accepted the terms and conditions of, that Act.

Item 4. The said Atlantic and Pacific Railroad Company filed maps designating its line of route with the Secretary of the Interior, which the Secretary of the Interior accepted as definitely locating the line of road, in sections and at dates as follows: From Springfield, Missouri, to the west line of Missouri, on December 17th, 1866; from the west line of Missouri to Kingfisher Creek, Indian Territory, on December 2d, 1871; from Kingfisher Creek to the eastern boundary of New Mexico, on February 7th, 1872; from the eastern boundary of New Mexico, to the western boundary of New Mexico, on March 12th, 1872; from the western boundary of New Mexico, through Arizona, to the east bank of Colorado River, near Needles, on March 12th, 1872; from the last-mentioned point on the Colorado River to township 7 north, range 7 east, San Bernardino Meridian, in California, on August 15th, 1872; from the last-mentioned point (township 7 north, range 7 east) to the west lines of Los Angeles County, in California, on March 12th, 1872; and from the last-mentioned point to the Pacific Coast at San Buenaventura, on August 15th, 1872. As such maps were filed, as aforesaid, the Secretary of the Interior transmitted them to the Commissioner of the General Land Office, directing that they be given proper action; except that the said two maps filed on August

15th, 1872, were transmitted by the Secretary of the Interior to the Commissioner on April 16th, 1874, without express direction.

Item 5. Under direction of the Secretary of the Interior, the Commissioner of the General Land Office, on April 22d, 1872, withdrew from pre-emption or homestead entry, private sale or location, **all** odd-numbered sections of public land in California lying within twenty miles and thirty miles on each side of the line of route designated upon the maps referred to in Item 4 hereof as filed on March 12th, 1872, which were not reserved, sold, granted or otherwise appropriated, and were free from pre-emption, or other claims or rights, on March 12th, 1872; and on November 23d, 1874, the said Commissioner, under direction of the Secretary of the Interior, withdrew from sale or entry all odd-numbered sections of public land in California lying within twenty miles and thirty miles on each side of the line of route designated upon the maps referred to in Item 4 hereof, as filed on August 15th, 1872, saying in his said order of withdrawal of November 23d, 1874, that the rights of the Atlantic and Pacific Railroad Company must attach to the lands so withdrawn, as of August 15th, 1872.

Item 6. The withdrawals referred to in the next preceding paragraph hereof, were accompanied by plats showing the line of route in California desig-

nated by the maps referred to in Item 4 hereof, with 20-mile limit lines and 30-mile limit lines parallel with and on each side of the said line, as such limit lines were established by the Commissioner of the General Land Office under direction of the Secretary of the Interior.

Item 7. The Atlantic and Pacific Railroad Company did not construct any railroad in California.

Item 8. The Act of Congress, approved on July 6th, 1886, entitled "An Act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of its road, and for other purposes," is admitted in evidence, by reference to the same as printed in Volume 24 of the United States Statutes at Large, pages 123 and following.

Subdivision III.

Item 9. The Southern Pacific Railroad Company mentioned in the Act of Congress referred to in Item 2 hereof, was duly incorporated and organized as such, under the laws of California, on December 2d, 1865, and the said company was thereby authorized and empowered to construct, own, maintain and operate a railroad from the Bay of San Francisco, thence through the counties of San Francisco, Santa Clara, Monterey, San Luis Obispo, Tulare and Los Angeles to the town of San Diego, thence easterly through San Diego county to the Colorado River.

Item 10. Within due time, the said Southern Pacific Railroad Company duly assented to, and accepted the terms and conditions of the Act of July 27th, 1866, mentioned in Item 2 hereof.

Item 11. On January 3d, 1867, the said Southern Pacific Railroad Company filed with the Secretary of the Interior a map designating a line of general route of the railroad which it claimed the right and authority to construct under the provisions of the Act of Congress of July 27th, 1866, referred to in Item 2 hereof; which line of route as designated on the said map, commenced in the city of San Francisco and extended thence by way of San Jose, Gilroy, Tres Pinos, Alcalde, Huron, Goshen and Mojave, to the Colorado River, at or near Needles.

Item 12. On January 3d, 1867, the Secretary of the Interior received and filed the map referred to in Item 11 hereof, and on that day delivered it to the Commissioner of the General Land Office with directions that the said map be given appropriate official action.

Item 13. On March 22d, 1867, the Commissioner of the General Land Office, acting under direction of the Secretary of the Interior's letter dated March 19th, 1867, withdrew all odd-numbered sections of public land lying within twenty miles and thirty miles on each side of the line of route shown on the map set forth in Item 11 hereof, from sale or loca-

tion, pre-emption or homestead entry. The Secretary of the Interior in his above-mentioned letter of March 19th, 1867, after directing the withdrawal, said: "I do not think it necessary at this time to pass upon the question as to whether this railroad company have adopted the route of any other railroad. Any indemnity of grant arising out of conflict of location under the first proviso in the third section of the Act, will be reserved for future consideration."

Item 14. The withdrawal referred to in the next preceding paragraph hereof, was accompanied by a map showing the line of general route designated on the map set forth in Item 11 hereof, with 20-mile limit lines and 30-mile limit lines parallel with and on each side of the said line of route, as such limit lines were established by the Commissioner of the General Land Office under direction of the Secretary of the Interior.

Item 15. On July 14th, 1868, the Secretary of the Interior rendered a decision wherein he held that the Southern Pacific Railroad Company was not lawfully authorized to construct a railroad along the line of route designated upon the map of January 3d, 1867, set forth in Item 11 hereof, and ordered the withdrawals referred to in Item 13 hereof, set aside; on August 20th, 1868, the Secretary of the Interior vacated the said order of July 14th,

1868, as to all lands south of San Jose; on November 2d, 1869, the Secretary of the Interior revoked the said order of August 20th, 1868, and directed restoration of the lands withdrawn on March 22d, 1867; on November 11th, 1869, upon review, Secretary Cox affirmed his said order of November 2d, 1869, and directed restoration of the said lands after sixty days' publication; on December 15th, 1869, Secretary Cox suspended the said orders of restoration made on November 2d, 1869, and November 11th, 1869; and on July 26th, 1870, the Secretary of the Interior directed that the original withdrawals of March, 1867, set forth in Item 13 hereof, be respected.

Item 16. The Act of Congress, approved on June 25th, 1868, entitled "An Act relative to filing reports of railroad companies," is admitted in evidence, by reference to the same as printed in volume 15 of the United States Statutes at Large, page 79.

Item 17. The Act of Congress, approved on July 25th, 1868, entitled "An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California," is admitted in evidence, by reference to the same as printed in volume 15 of the United States Statutes at Large, page 187.

Item 18. Prior to the year 1869, the San Francisco and San Jose Railroad Company was duly incorporated and organized under the laws of Califor-

nia, and thereby authorized to construct a railway from San Francisco to San Jose.

Item 19. During the year 1869, the said San Francisco and San Jose Railroad Company constructed and fully equipped a railroad from San Francisco to San Jose; during the same year the said Southern Pacific Railroad Company constructed and fully equipped a continuation of the said railroad from San Jose to Gilroy, a distance of 30.26 miles; and during the years 1869 and 1870 the said Southern Pacific Railroad Company constructed and fully equipped a further continuation of the said railroad from Gilroy to Tres Pinos, a distance of more than 20 miles. All of the said railroad from San Francisco to Tres Pinos was constructed upon, or as nearly as practicable upon, the line designated on the map of January 3d, 1867, set forth in Item 11 of this statement.

Item 20. By an Act, approved on March 1st, 1870, entitled "An act relating to certificates of incorporation," the legislature of California provided as follows:

"Section 1. Any corporation now or hereafter organized under the laws of this State may amend its articles of association or certificate of incorporation, by a majority vote of the board of directors, or trustees, and by a vote or written assent of the stockholders representing at least two-thirds of the

capital stock of such corporation; and a copy of the said articles of association or certificate of incorporation as thus amended, duly certified to be correct by the president and secretary of the board of directors, or trustees of such corporation, shall be filed in the same office, or offices, where the original articles or certificate are required by law to be filed; and from the time of filing such copy of the amended articles or certificate, such corporation shall have the same powers, and it and the stockholders thereof shall be thereafter subject to the same liabilities as if such amendment had been embraced in the original articles or certificate; provided, that the time of the existence of such corporation shall not be thereby extended beyond the time fixed in the original articles or certificate; and provided, further, that such original and amended articles or certificate shall, together, contain all the matters and things required by the law under which the original articles of association or certificate of incorporation were executed and filed; and provided further, that nothing herein contained shall be construed to cure or amend any defect existing in any original certificate of incorporation heretofore filed, by reason of the failure of such certificate to set forth matters required by law to make the same valid as a certificate of incorporation at the time of the filing thereof; also provided, that unless the vote or written assent of all

the stockholders has been obtained, then a notice of the intention to make such amendment shall first be advertised for sixty days, in some newspaper in the town or county in which the principal place of business of said company is located; and the written protest of any one of said stockholders, or his duly authorized agent or attorney, whose assent has not been obtained, filed with the Secretary of the said company, shall, unless withdrawn, be effectual to prevent the adoption of such amendment; provided that nothing in this act shall be construed to authorize any corporation to diminish its capital stock.

Sec. 2. This act shall take effect and be in force after its passage."

Item 21. By an Act approved on April 4th 1870, entitled "An Act to aid in giving effect to an Act of Congress relating to the Southern Pacific Railroad Company," the legislature of California enacted as follows:

"Section 1. Whereas, by the provisions of a certain act of Congress of the United States of America, entitled an act granting lands to aid in the construction of a railroad and telegraph line from San Francisco to the eastern line of the State of California, approved July twenty-seventh, eighteen hundred and sixty-six, certain grants were made to, and certain rights, privileges, powers and authorities were vested in and are conferred upon the Southern

Pacific Railroad Company, a corporation duly organized and existing under the laws of the State of California; therefore, to enable the said company to more fully and completely comply with and perform requirements, provisions and conditions of the said act of Congress, and all other acts of Congress now in force or which may hereafter be enacted, the State of California hereby consents to said act; and the said company, its successors and assigns, are hereby authorized and empowered to change the line of its railroad so as to reach the eastern boundary line of the State of California by such route as the Company shall determine to be the most practicable, and to file new amendatory articles of association; and the right, power and privilege is hereby granted to, conferred upon and vested in them, to construct, maintain and operate, by steam or other power, the said railroad and telegraph line mentioned in the said acts of Congress, hereby confirming to and vesting in the said company, its successors and assigns, all the rights, privileges, franchises, power and authority conferred upon, granted to or vested in said company by the act of Congress and any act of Congress which may be hereafter enacted.

Sec. 2. This act shall take effect and be in force from and after its passage."

Item 22. The Joint Resolution of Congress, approved on July 28, 1870, entitled "Joint resolution

concerning the Southern Pacific Railroad of California," is admitted in evidence, by reference to the same as printed in Volume 16 of the United States Statutes at Large, Page 382.

Item 23. On October 11th, 1870, articles of association, amalgamation and consolidation were made and entered into, in due conformity to and compliance with the laws of California, by and between the said Southern Pacific Railroad Company and San Francisco and San Jose Railroad Company, whereby it was provided that the last named company was amalgamated and consolidated with the said Southern Pacific Railroad Company under the corporate name and style of Southern Pacific Railroad Company, and that the said Southern Pacific Railroad Company thereby became the owner of all stock and property of the said San Francisco and San Jose Railroad Company; and the said articles further provided that the Southern Pacific Railroad Company was authorized to purchase, construct, maintain, own and operate a railroad from the city of San Francisco through the counties of San Francisco, San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego to the Colorado River, and such branch line railroads as its Board of Directors might deem advantageous.

Item 24. The said Southern Pacific Railroad Com-

pany never constructed any railroad between Tres Pinos and Alcalde, a distance of about fifty miles.

Item 25. The said Southern Pacific Railroad Company completed the construction of, and fully equipped, a continuous line of railroad from Tres Pinos, by way of Huron, Goshen and Mojave, to junction with the Atlantic and Pacific Railroad, on the Colorado River, at Needles, in several sections, on or about the following dates: The 17th section, 20.559 miles, from Tres Pinos (in NE. $\frac{1}{4}$ of section 23, Township 21 south, range 14 east, M. D. M.) to a point in the NW. $\frac{1}{4}$ of section 11, township 20 south, range 17 east, M. D. M., on July 16th, 1888; the 9th section, 20 miles, from the last-mentioned point to the NE. $\frac{1}{4}$ of section 2, township 19 south, range 20 east, M. D. M., on January 9th 1877; the 8th section 20 miles, from the last-mentioned point to Goshen (in section 19, township 18 south, range 24 east, M. D. M.), on December 11th 1876; the 3d section 20 miles, from Goshen to the NW. $\frac{1}{4}$ of section 30, township 21 south, range 25 east, M. D. M., on June 30th, 1872; the 4th section, 20 miles from the last-mentioned point to the NW. $\frac{1}{4}$ of section 2, in township 25 south, range 25 east, M. D. M., on June 30th, 1873; the 5th section, 20 miles, from the last-mentioned point to the NE. $\frac{1}{4}$ of section 9, township 28 south, range 26 east, M.D.M., on June 13th 1874; the 6th section, 20 miles, from the last-men-

tioned point to the NE. $\frac{1}{4}$ of section 5, township 30 south, range 29 east, M.D.M., on June 10th, 1875; the 7th section, 20 miles, from the last-mentioned point to the SE. $\frac{1}{4}$ of section 33, township 30 south, range 31 east, M. D. M., on January 13th, 1876; the 10th section, 41.66 miles, from the last-mentioned point to Mojave (in the NE. $\frac{1}{4}$ of section 17, township 11 north, range 12 west, S. B. M.), on December 17th 1877; the 11th section, 12th section, 13th section, 14th section, 15th section, and 16th section, in all 242.507 miles, connecting with the 10th section at Mojave and extending thence to the Colorado River, at or near Needles, all constructed prior to April 19th 1883.

Item 26. Commissioners, duly appointed for that purpose, examined all of the said railroad from San Jose to Tres Pinos and from Alcalde to the Colorado River, at or near Needles, after construction, respectively, of each of the said several sections thereof, and duly reported to the Secretary of the Interior that each of said sections had been completed in a good, substantial and workmanlike manner, as near as may be along the line indicated on the map of January 3d, 1867, set forth in Item 11 of this stipulation, in all respects as required by the said Act of July 27th, 1866, and recommended that the same be accepted and approved; each of which reports was accompanied by a map of the survey, location and

profile of the section of road as constructed and reported upon, duly verified by the proper officers of the said Southern Pacific Railroad Company as a map and profile of such railroad as finally located and constructed and as correctly showing the location thereof, with the approval of the said Commissioners endorsed upon the maps, and each of said reports and maps were accepted and approved by the Secretary of the Interior. Such reports were made and maps approved by the Commissioners, and said reports and maps were received, filed and approved by the Secretary of the Interior, on the following dates: 1st section (San Jose to Gilroy), report made and maps approved by the Commissioners on October 29th, 1870, report and map approved by the Secretary on January 20th, 1871; 2d section (Gilroy to Tres Pinos), report made and maps approved by the Commissioners on September 12th, 1871, report and map approved by the Secretary on October 13th, 1871; 3d section, report made and map approved by the Commissioners on September 14th, 1872, report and map approved by the Secretary on September 28th, 1872; 4th section, report made and map approved by the Commissioners on July 23d, 1873, report and map approved by the Secretary on August 5th, 1873; 5th section, report made and map approved by the Commissioners on September 19th, 1874, report and map approved by the Secretary on October 9th,

1874; 6th section, report made and map approved by the Commissioners on August 3d, 1875, report and map approved by the Secretary on August 21st, 1875, 7th section report made and map approved by the Commissioners on May 27th, 1876, report and map approved by the Secretary on June 14th, 1876; 8th section, report made and map approved by the Commissioners on January 2d 1877, report and map approved by the Secretary on January 22d, 1887; 9th section, report made and map approved by the Commissioners on February 9th, 1877; report and map approved by the Secretary on February 20th, 1877; 10th section, report made and map approved by the Commissioners on January 30th, 1878, report and map approved by the Secretary on February 11th, 1878; 11th section, 12th section, 13th section, 14th section, 15th section, and 16th section, reports made and maps approved by the Commissioners on December 27th, 1884, reports and maps received and filed by the Secretary on January 7th, 1885, and approved by the Secretary on September —, 1897; 17th section, report made and map approved by the Commissioners on April 2d, 1889, report and map approved by the Secretary on October 23d, 1889.

Subdivision IV.

Item 27. The Act of Congress, approved on March 3d, 1871, entitled, "An Act to incorporate the

Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," is admitted in evidence by reference to the same as printed in Volume 16 of the United States Statutes at Large, pages 573 and following.

Item 28. On May 16th, 1871, the Board of Directors of the Southern Pacific Railroad Company adopted a resolution accepting the terms, conditions and impositions of the Act of Congress mentioned in the next preceding paragraph hereof, and directing that a copy thereof, certified under the seal of said company, be forwarded to and filed with the Secretary of the Interior; and on February 25th, 1887, a copy of the said resolution, certified by the Secretary of the said company, under the corporate seal of the said company, was filed with the Secretary of the Interior.

Item 29. On April 3d, 1871, the said Southern Pacific Railroad Company filed with the Secretary of the Interior a map designating the line of general route of the railroad which it claimed the right and authority to construct under the provisions of the said Act of March 3d, 1871; which map the Secretary of the Interior on that day received, filed and delivered to the Commissioner of the General Land Office, with directions that the same be given appropriate action.

Item 30. On April 21st, 1871, the Commissioner of the General Land Office, under direction of the

Secretary of the Interior, withdrew all odd-numbered sections of public land lying within twenty miles and thirty miles on each side of the line of route shown on the map referred to in Item 29 hereof, from sale or location, pre-emption or homestead entry.

Item 31. The withdrawal referred to in Item 30 hereof, was accompanied by a plat showing the line of general route designated on the map set forth in Item 29 of this stipulation, with 20-mile limit lines and 30-mile limit lines parallel with and on each side of the said line of route, as such limit lines were established by the Commissioner of the General Land Office under direction of the Secretary of the Interior.

Item 32. On April 15th, 1871, the said Southern Pacific Railroad Company, duly conforming to and complying with the laws of California, amended its articles of incorporation as they then existed, so as to include therein a particular description of the line of route designated on the plat set forth in Item 29 hereof.

Item 33. The said Southern Pacific Railroad Company completed the construction of, and fully equipped, a continuous railroad from Mojave, by way of Los Angeles, to the Colorado River, at or near Yuma, in several sections, along or near the line designated on the said general route map of April 3d, 1871, all prior to December 6th, 1877.

Item 34. Commissioners, duly appointed for that purpose, examined all of the said railroad after construction, respectively, of each of the several sections thereof, and duly reported to the Secretary of the Interior that each of said sections has been completed in a good, substantial and workmanlike manner, in all respects as required by the said Act of March 3d, 1871; and recommended that the same be accepted and approved; each of which reports was accompanied by a map of the survey, location and profile of the section of road as constructed and reported upon, duly verified by the proper officers of the said Southern Pacific Railroad Company as a map and profile of such railroad as finally located and constructed, and showing the correct location thereof, with the approval of the said Commissioners endorsed upon the maps. The said reports were made and maps approved by the Commissioners, and the said reports and maps were filed and approved by the Secretary of the Interior, and approved by the President of the United States, on the following dates: 1st section (from a point in the NW. $\frac{1}{4}$ of section 3, township 2 north, range 15 west, S. B. M., to a point in the NE. $\frac{1}{4}$ of section 27, township 1 south, range 9 west, S. B. M., a distance of 50 miles), report made and map approved by the Commissioners on April 15th, 1874, report and map filed and approved by the Secretary of the Interior on May 8th, 1874, and

report approved by the President of the United States on May 9th, 1874; 2d section (from the said point in the NE. $\frac{1}{4}$ of section 27, township 1 south, range 9 west, S. B. M., to a point in the SW. $\frac{1}{4}$ of section 4, township 3 south, range 1 west S. B. M., a distance of 50 miles), report made and map approved by the Commissioners on October 21st, 1875; report and map filed and approved by the Secretary on November 8th, 1875, and report approved by the President on November 11th, 1875; 3d section, (from the said point in the SW. $\frac{1}{4}$ of section 4, township 3 south, range 1 west S. B. M., to a point in the SW. $\frac{1}{4}$ of section 24, township 5 south, range 7 east, S. B. M., a distance of 50 miles), report made and map approved by the Commissioners on June 22d, 1876, report and map filed and approved by the Secretary on July 10th, 1876, and report approved by the President on July 21st, 1876; 4th section (from the said point in the NW. $\frac{1}{4}$ of section 3, township 2 north, range 15 west, S. B. M., to a point in the NE. $\frac{1}{4}$ of section 17, township 11 north, range 12 west, S. B. M., a distance of 78.59 miles), report made and map approved by the Commissioners on February 17th, 1877, report and map filed and approved by the Secretary on March 1st, 1877, and report approved by the President on March 2d, 1877; 5th section (from the said point in the SW. $\frac{1}{4}$ of section 24, township 5 south, range 7 east, S. B. M., to a point in the SE.

$\frac{1}{4}$ of section 26, township 16 south, range 22 east, on the Colorado River, a distance of 118.37 miles), report made and map approved by the Commissioners on December 6th, 1877, report and map filed and approved by the Secretary on January 19th, 1878, and report approved by the President on January 23d, 1878.

Subdivision V.

Item 35. The following lands described in Exhibit "B," attached to plaintiff's bill of complaint herein, are within primary limits common to the land grants made by the said Act of Congress of July 27th, 1866, unto the Atlantic and Pacific Railroad Company and unto the Southern Pacific Railroad Company; for which reason the plaintiff's bill of complaint herein is dismissed, without prejudice, as to said lands, to wit: Sections 1, 3, 5, N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of section 7; N. $\frac{1}{2}$ of NE. $\frac{1}{4}$, N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of section 9, N. $\frac{1}{2}$, and N. $\frac{1}{2}$ of S. $\frac{1}{2}$ of section 11, all in township 6 north, range 10 west, San Bernardino Base and Meridian.

Item 36. All lands described in the bill of complaint herein other than the lands described in the next preceding paragraph hereof (Item 35) are situated within primary limits of the land grant made unto the Atlantic and Pacific Railroad Company by the said Act of Congress of July 27th, 1866, and

within indemnity limits of the land grant made unto the Southern Pacific Railroad Company by the same act.

Item 37. All lands described in Exhibit "A," attached to the bill of complaint herein, were patented to the Southern Pacific Railroad Company by patent dated June 30th, 1903, pursuant to said company's indemnity selection thereof made by List No. 94, filed on November 10th, 1903.

Item 38. Exhibit "A" to the defendants' answer herein, contains full, true and correct statements of all sales made by the Southern Pacific Railroad Company of lands described in Exhibit "A" and Exhibit "B," attached to the plaintiff's bill of complaint herein, and of all material particulars thereof. Each and all of such purchasers were made for full value of the lands at times of sale, without notice or knowledge of any claims or rights of the United States in or to the lands purchased, by persons who in good faith believed they were purchasing from the said company a good and sufficient title, except in so far as the purchasers had constructive notice that the lands purchased were granted by the said act of July 27th, 1866, unto the Atlantic and Pacific Railroad Company, and were not granted to and did not belong to the said Southern Pacific Railroad Company; and the title of each of such purchasers to the land so purchased was confirmed by the act of

Congress approved March 2d, 1896, published in Volume 14, United States Statutes at Large, page 42.

Item 39. The official "Land Office Report, 1875," at page 409, contains the following "Statement exhibiting land concessions by acts of Congress to States and Corporation, etc.": Act Mar. 3, 1871, 16 Stats. 579, Southern Pacific Railroad Company, estimated quantity embraced within the 20 and 30 mile limits of the grant, 3,520,000 acres; estimated quantity which the company will receive from the grant, within the 20 and 30 mile limits thereof, 3,000,000 acres.

Item 40. It appears from the records of the United States Land Office, for the Los Angeles District of California, that within the indemnity limits of the grant made to the Southern Pacific Railroad Company by the Act of Congress of March 3, 1871, there remains more than 50,000 acres of surveyed public land, vacant of record, embraced in odd-numbered sections, returned as agricultural in character, which have not been selected as indemnity by said company, not including any lands embraced within either the granted limits or indemnity limits of the grant to the Atlantic and Pacific Railroad Company, made by the Act of Congress of July 27, 1866, and not including any lands withdrawn for the Texas Pacific Railroad Company, under the map

of general route filed by said company in the year 1871, under said Act of Congress of March 3, 1871.

Subdivision VI.

Item 41. Either party to this suit may introduce further and additional testimony or other evidence, at any time within 90 days from this date.

Dated and signed on December 7th, 1904.

JOSEPH H. CALL,

Special Assistant U. S. Attorney.

WM. SINGER, Jr.,

Attorney for the Defendants.

[Endorsed]: No. 1114. U. S. Circuit Court, Southern District of California, Southern Division. United States vs. Southern Pacific Railroad Co. et al. Stipulation as to Evidence. Filed Dec. 13, 1904. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm. Singer, Jr., No. 49 Second St., San Francisco, Cal., Atty. for Defendant.

*United States Circuit Court, Ninth Circuit, Southern
District of California, Southern Division.*

Case No. 1114.

UNITED STATES,

Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
and Others,

Defendants.

Further Stipulation as to Evidence.

It is stipulated in the above-entitled cause, subject to all objections as to its relevancy and materiality, as follows:

A. It appears from the records of the United States Land Office for the Los Angeles District, California, that within the indemnity limits of the grant made to the Southern Pacific Railroad Company, by the Act of Congress of July 27, 1866, there remains more than 50,000 acres of surveyed public land, vacant of record, embraced in odd-numbered sections, returned as agricultural in character, which have not been selected as indemnity by said company, not including any lands embraced within the granted limits of the grant to the Atlantic and Pacific Railroad Company, as made by the same act of Congress.

B. The official "Land Office Report, 1875," at page 409, contains the following "Statement exhibiting land concessions by acts of Congress to States and Corporations, etc.": Act July 27, 1866, 14 Statutes, page 292, Southern Pacific Railroad Company, estimated quantity embraced within the 20 and 30 mile limits of the grant, 6,000,000 acres; estimated quantity which the company will receive from the grant, within the 20 and 30 mile limits thereof, 3,750,000 acres.

Dated and signed on March 28th, 1905.

JOSEPH H. CALL,

Special Assistant U. S. Attorney.

WM. SINGER, Jr.,

Attorney for the Defendants.

[Endorsed]: No. 1114. U. S. Circuit Court, Southern District of California, Southern Division. United States vs. Southern Pacific Railroad Co. et al. Further Stipulation as to Evidence. Filed Mar. 29, 1905. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm. Singer, Jr., 1127 Merchants' Exchange, San Francisco, Cal., Atty. for Defendant.

*In the United States Circuit Court, Southern District
of California, Southern Division.*

No. 1114.

THE UNITED STATES,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
et al.,

Defendants.

Petition for Rehearing.

To the Judges of the United States Circuit Court,
Southern District of California:

The United States, by Joseph H. Call, Special Assistant Attorney, prays that the Court will rehear and reconsider its decision entered in the above-entitled cause on the 16th day of July, 1906, as to those lands selected by the Southern Pacific as indemnity, which were not embraced in the former decree of this court in case No. 184, reported in 168 U. S. Reports, at pages 1 to 66, as to which lands the Court Ordered the bill dismissed.

It appears that the Court was under some misapprehension as to the situation of these lands, or as to what had been decided in former cases between

the United States and the Southern Pacific as to other lands.

(1). The lands now under consideration are situated within the primary and granted limits of the grant made to the Atlantic and Pacific Railroad Company by the act of Congress of July 27, 1866, according to the map of definite location filed by said company, and said lands are also within the indemnity limits of the grant made by section 18 of the same act to the Southern Pacific Railroad Company, to aid in building the railroad from San Francisco via Mojave to the Colorado River at Needles.

The grant to the two railroads was thus of even date, and by the same act.

The grant to the Atlantic and Pacific was forfeited by the act of July 6, 1886, for the sole benefit of the United States, as frequently declared in former decisions of the Supreme Court.

The principle contended for in this suit, and which has never been questioned by the Supreme Court, but reiterated from time to time in a long series of decisions, is that where lands have been granted to or set apart for the construction of one railroad, or for one object of internal improvement, they cannot be taken by another company under another grant for another object of internal improvement of a subsequent date, or of the same date, for that, to give effect to the intention of Congress, what has

been granted to one corporation shall not be taken by another.

(2). Case No. 600, on the docket of this court, decided by the Supreme Court in 183 U. S. 519, did not involve any lands, so far as appears from the decision of the Supreme Court, situated as those in the present case. The Supreme Court in that case, stated, as to what lands were involved, as follows:

“The lands in controversy were within the grant made July 27th, 1866, c. 278, 14 Stat. 292, to the Atlantic and Pacific Railroad Company (hereinafter called the Atlantic and Pacific), in aid of its projected line from Springfield, Missouri, to the Pacific Ocean, and were situated along that line between the eastern boundary of California and the Pacific Ocean. The Southern Pacific claims title to these lands by virtue of the eighteenth section of that act and its proceedings thereunder, had with the express approval of Congress.”

The decree of the Supreme Court was that the United States was the owner of an undivided half of the lands within the common granted limits of the two roads, and directed the bill to be dismissed without prejudice as to all other lands.

See 183 U. S. 535.

It is thus seen that the Supreme Court in case 600, did not pass upon any question of title except to those lands within the common place limits of the

two grants, and left for future adjudication, if any suits should arise, all questions as to the lands within the Southern Pacific indemnity limits, and the Atlantic and Pacific granted limits.

(3). The case of Southern Pacific Railroad Company vs. United States, 189 U. S. 447, 450, 451, presented this identical question, and is the latest declaration of the Supreme Court upon that subject, it having been decided a considerable time after the decision of case No. 600, reported in 183 U. S. 519.

In that case the grants to the Texas Pacific Railroad and the Southern Pacific Railroad were of the same date, and made by the same act of Congress.

Under ordinary circumstances the Court would have divided the lands within the commonplace limits in equal undivided moiety to each road, but by reason of the proviso of section 23 of the act of March 3, 1871, which provided that "the grant to the Southern Pacific should not affect any rights of any other railroad company, present or prospective," the Court adjudged that the Southern Pacific could not take as a part of its granted lands any of those within the withdrawal limits of Texas grant.

In so deciding, the Court admitted the principle laid down in the case of 146 U. S. 587, 619.

But when the Court came to the question as to whether the Southern Pacific was entitled to select as indemnity any of the lands falling within the

place limits of the Texas Pacific grant, it was confronted with a question which had not been definitely determined in any of the cases between the United States and the Southern Pacific Railroad Company.

In holding that the Southern Pacific could not so select as indemnity any of the Texas Pacific lands, the Court did not rest its decision upon the proviso of section 23, but upon former decisions of the Supreme Court and of the Interior Department, citing, to sustain the decision, among other cases:

Southern Pacific Railroad vs. Moore, 11 L. D. 534.

Clark vs. Herington, 168 U. S. 206.

Bardon vs. N. P. R. R., 145 U. S. 535, 545.

It cannot be contended that the Court, in 189 U. S. 447, 450, based its decision that the Southern Pacific could not select as indemnity lands within the granted limits of the Texas Pacific grant of the same date upon the ground of the proviso of section 23 above mentioned, because if that had been the controlling reason for the decision, or even one of the reasons, the Court would have adverted to that proviso in connection with the question decided.

The following contains all that the Court said upon that question, together with the authorities cited:

“The Texas Pacific grant was declared forfeited by the act of February 28, 1885, c. 265, 23 Stat. 337, and this forfeiture inured to the benefit of the

United States. *United States vs. Southern Pacific Railroad*, 146 U. S. 570. It is argued further, however, that if the Southern Pacific did not get the lands in question under its primary grant, it may take a part of them as indemnity lands. It is said that the company has a right to take them for that purpose if the status of the lands at the time of selection permits it. *Ryan vs. Railroad Co.*, 99 U. S. 382. That contention seems to be disposed of by *Southern Pacific Railroad vs. United States*, 168 U. S. 1, 47, 66, and the practice of the Land Department for many years has been inconsistent with it. *Southern Pacific Railroad vs. Moore*, 11 L. D. 534; *Moore vs. Kellogg*, 17 L. D. 391; *Smead vs. Southern Pacific Railroad*, 29 L. D. 135. When it is decided that the company got no title to the land within its twenty-mile limit, it would be contrary to the intimations of the cases to allow it to take the adjoining strip outside under a claim of indemnity. See *Bardon vs. Northern Pacific Railroad*, 145 U. S. 535, 545; *Clark vs. Herington*, 186 U. S. 206. It is not clear that the language of the statute does not forbid it. The indemnity to the Atlantic and Pacific, by section 3 of its charter, adopted for the Southern Pacific by section 18, is to be other lands 'in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved

numbers.' It might be argued that the last quoted words dispose of the matter. Without going into further reasons for our decision, we are of opinion that the decree appealed from was right."

(4). The identical question here presented, and concerning the identical lands involved in this suit, was before the Interior Department, and was decided by Judge Lamar, then Secretary of the Interior, in the case of Southern Pacific Railroad, 6 L. D. 349, 350, wherein it was held that the Southern Pacific could not select under its grant of 1866 as indemnity lands falling within the place limits of the grant to the Atlantic and Pacific Railroad of the same date, and in that case Judge Lamar, in his letter to the Commissioner, affirming the action of the Commissioner, said:

"In considering said rule upon the answer of the company you held * * *

"That the lands within the granted limits of the Atlantic and Pacific and the indemnity limits of the Southern Pacific 'could not have been selected as indemnity by the Southern Pacific,' for the reason that, although said lands were withdrawn for the Southern Pacific Company, they fell within the granted limits of the Atlantic and Pacific, upon the subsequent definite location of its road.' * * *

"I see no reason for any further action by the department upon this rule except as to lands embraced

within the common granted or primary limits of both roads."

That decision of Judge Lamar has never been overruled in the Interior Department, nor in the Supreme Court, but has been constantly adhered to.

In *Clark vs. Herington*, 186 U. S. 206, 208, referred to by the Supreme Court, and approved in 189 U. S. 447, 450, the Court held that the even-numbered sections within the place limits of the Leavenworth Railroad could not consistently with the intention of Congress be selected as indemnity by the Southern Pacific Railroad, where the indemnity limits of the latter overlapped the former.

Bardon vs. Northern Pacific Railroad, 145 U. S. 535, 545, broadly relied upon by the Supreme Court in *Southern Pacific vs. United States*, 189 U. S. 447, 450, as sustaining the proposition that lands once set apart for one public purpose cannot be taken for another purpose, contains the following important declaration of that principle referred to by the Supreme Court (145 U. S. 544, 545):

"No attempt has ever been made to include lands reserved to the United States, which reservation afterwards ceased to exist, within the grant, though this road, and others with grants in similar language, have more than once passed through military reservations for forts and other purposes, which have been given up or abandoned as such reservations, and

were of great value; nor is it understood that in any case where lands had been otherwise disposed of, their reversion to the government brought them within the grant. Not only does the land once reserved not fall under the grant should the reservation afterwards from any cause be removed, but it does not then become a source of indemnity for deficiencies in the place limits. Such deficiencies can only be supplied from lands within limits designated by the granting act or other law of Congress."

(5). Neither can the present case be distinguished from *Chicago Railroad vs. United States*, 159 U. S. 372, 375, in which Congress made a grant for the construction of the Sioux City Railroad, and by the same act a grant for the construction of the Milwaukee Railroad.

The Sioux City grant was forfeited and thereafter the Milwaukee road sought to select as indemnity a portion of the lands within the limits of the grant to the Sioux City road, and the Court said:

"If, as matter of law and fact, these lands were never granted for the benefit of the Milwaukee road, but were granted in aid of the construction of the Sioux City road, and for no other purpose, they could never—consistently with the act of Congress—have been used by the State for the benefit of the Milwaukee road * * *. As these lands were set apart exclusively for the construction of the Sioux

City road, no failure to construct that road by the State or by the corporation charged with the duty of building it could, in any case, without the assent of Congress, justify their being applied in aid of the construction of another and distinct road."

(6). The case of *Sioux City Railroad vs. U. S.*, 159 U. S. 349, 366, involved the same question, and was again decided the same way.

It has never been held by any court that a railroad company may select as indemnity lands any sections or parts of sections falling within the place limits of a grant to another railroad, and it has always been ruled that where a railroad grant is forfeited and lands retaken for the United States, that it does not operate to enlarge the grant of any railroad company, but that such lands are retaken solely for the benefit of the United States.

The first cases in which this principle arose were:

Sioux City Railroad vs. Winona Railroad, 112 U. S. 720.

Sioux City vs. Chicago Railroad, 117 U. S. 406.

In both of those cases the grants to the two railroads were of the same date and by the same act, and the Court held that lands in the commonplace limits were to be taken one-half by each railroad, and that as to the other lands the grants of place lands controlled over indemnity, and that neither road could

take as indemnity, land within the place limits of the other road.

In all the subsequent cases, one of the grants had been forfeited by Congress, and it was held that the fact that the lands were forfeited did not change the rule, but that the United States by forfeiting the grant, and resuming the title, stood in the shoes of the railroad whose lands were thus forfeited, and that such lands could not be taken while in the hands of the United States, if they could not have been taken while in the hands of the railroad whose grant was forfeited.

(7). In case No. 878 in this court, the decree in which was affirmed by the Supreme Court in 200 U. S. 341, a part of the lands were situated precisely as the lands in the present suit.

They were lands within the place limits of the Atlantic and Pacific grant, and within the indemnity limits of the Southern Pacific grant of the same date, and in that case the lands had been sold to bona fide purchasers, and this Court decreed to the Government their value of \$1.25 per acre, which decree was affirmed by the Circuit Court of Appeals and by the Supreme Court.

It is true that the Supreme Court does not, in its decision (200 U. S. 341), discuss the question of title, because the attorneys for the railroad company conceded in the Supreme Court (what they did not

concede in the Circuit Court, or Circuit Court of Appeals) that patents to these lands were erroneously issued and that the lands were not granted to the Southern Pacific.

Turning to the decree in said case 878, at page 244 of the printed record, which is found in the original decree in this court, in subdivision IV, the following language appears:

"The Court finds and determines that all the lands described in this subdivision IV, are within the granted or twenty-mile limits of the grant made unto the Atlantic and Pacific Railroad Company by act of Congress approved on July 27th, 1866, as established by the map of definite location filed by that company in the general land office during the year 1872, which grant was forfeited unto the United States by act of Congress approved on July 6th, 1886; that all of the said lands are also situated within the indemnity limits of the grant made unto the said Southern Pacific Railroad Company by section 18 of the said act of Congress of July 27, 1866,"
* * * and thereupon the Court adjudged that the Southern Pacific was indebted to the United States \$1.25 per acre for those lands, they having been sold to bona fide purchasers.

In the answer of the Southern Pacific Railroad Company in that case (878) and in the briefs in the Circuit Court, and the Circuit Court of Appeals it

was insisted that the Southern Pacific had a right to select those lands under its grant of 1866, and that consequently the United States could not recover \$1.25 per acre for them, even if they had been sold to bona fide purchasers.

This Court held otherwise, which was affirmed by the Appellate Courts upon both appeals.

117 F. 544; 133 F. 651; 200 U. S. 341.

(8). In the case now before the Court, there seems to have been some misapprehension as to the effect and scope of the decision in case No. 600, 183 U. S. 519.

That case, as stated by the Court, and as adjudged in the decree, disposed of the lands only within the commonplace limits of the two roads, and left for future adjudication and determination all other lands, and which can only be adjusted according to the settled principles laid down in the decisions of the Supreme Court.

We therefore ask the Court to reconsider its decision in this case, and to apply to the present case the principle in all the cases above mentioned as to the lands within the place limits of one railroad claimed as indemnity by another.

Respectfully,

JOSEPH H. CALL,

Special Assistant U. S. Attorney.

July 17, 1906.

[Endorsed]: 1114. In the United States Circuit Court, Southern District of California, Southern Division. The United States, Complainant, vs. Southern Pacific Railroad Company et al., Defendants. Petition for Rehearing. Filed Jul. 17, 1906. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Joseph H. Call, Special Assist. U. S. Attorney.

At a stated term, to wit, the July Term, A. D. 1906, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, held at the courtroom, in the city of Los Angeles, on Monday, the thirtieth day of July, in the year of our Lord one thousand nine hundred and six. Present: The Honorable ERSKINE M. ROSS, Circuit Judge.

No. 1114.

UNITED STATES,

Complainants,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,

Defendants.

Order Granting Petition for Rehearing.

This cause having heretofore been submitted to the Court for its consideration and decision, on com-

plainants' petition that the Court reconsider its decision rendered in said action on the 16th day of July, 1906, as to those lands selected by the Southern Pacific Railroad Company as indemnity, which were not embraced in the former decree of this court in case No. 184, reported in 168 U. S. Reports, pages 1 to 66, as to which lands the Court ordered the bill dismissed; and the Court having duly considered said complainants' petition for rehearing, and being fully advised in the premises, it is now by the Court ordered that said petition for rehearing be, and the same hereby is, granted.

*United States Circuit Court, Ninth Circuit, Southern
District of California, Southern Division.*

Case No. 1114.

UNITED STATES,

Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,
and Others,

Defendants.

Motion to Vacate Order Granting Rehearing.

The defendants most respectfully ask this Court to vacate its order granting plaintiff's petition for a rehearing of this case, on the ground that the said

petition is without merit, and discloses no true ground (or reason) for a rehearing; and in this behalf the defendants, most respectfully, beg leave to show:

1st. That the said petition, from point 1 to point 6 thereof, both inclusive, is a bald repetition of the briefs filed in this case on behalf of the United States, at the hearing had; presenting the same points in the same way, based on the same citations.

This part of the petition (points 1 to 6, inclusive) is answered and overcome, fully and particularly, by pages 22 to 29, 60 to 64, inclusive, of "Defendants' Brief" (printed) filed herein at the hearing had.

2d. The only new point presented by the petition for rehearing is based on an incorrect and misleading quotation from subdivision IV of this Court's decree in case No. 878; and to correct the quotation is to dispose of the point.

By quoting a selected part of a sentence (the quotation ends with a comma), the petition makes it appear that the decree quoted from adjudged against the validity of patents issued to the Southern Pacific under the indemnity provisions of its main-line grant; whereas the patents considered, and ruled on, in the subdivision quoted from (IV) are branch-line patents for primary lands.

As said before, the misleading quotation ends, abruptly, with a comma—otherwise the point made

would have been lost; as the words which follow that comma, and conclude the sentence are: "And within the primary or granted limits of the grant made unto the said Southern Pacific Railroad Company by the said Act of Congress of March 3d, 1871."

After reciting formed decisions against the Southern Pacific Railroad Company's right to primary branch-line lands, the said subdivison (IV) reads as follows:

"That on January 9th, 1885, at a time when the title to the said land was vested in the Atlantic and Pacific Railroad Company as a part of its said land grant, the said lands were erroneously patented unto the defendant Southern Pacific Railroad Company as inuring to it under its said grant of March 3d, 1871."

The printed "Brief for the United States" before the Supreme Court, in that case (No. 878), was filed in this court last month as part of the Brief for United States in case No. 1196; from which printed brief (No. 878) the following quotation is made (pp. 50, 51) as giving the true statement of what was decided by subdivision IV of this Court's decree in No. 878:

"These six tracts, as found by the courts below, and as adjudged in the decree, were patented to the Southern Pacific Company under selections made by it as a part of its grant of 1871, and those patents

were therefore erroneously issued. (See Decree, Subd. IV, Record 244, 245, 246.)

These lands were in fact selected by the Southern Pacific, and patented by the United States to that company, as a part of the grant of March 3, 1871, and not under any other grant or claim of title.

This Court definitely decided and determined, in the former litigations, that the Southern Pacific Company could not take such lands under its grant of 1871. (U. S. vs. S. P. R. R. Co., 146 U. S. 570, 615, 619; S. P. R. R. Co. vs. U. S., 168 U. S. 1, 46, 47.)

The action of the Interior Department in patenting those lands under the Act of 1871, was therefore erroneous, and it is no defense for the Southern Pacific Railroad Company to now say that it might possibly have claimed those lands under some other grant, and that such claim might possibly have been allowed by the Interior Department. (*Germania Iron Co. vs. United States*, 165 U. S. 379, 383.)"

The foregoing matter was written into the "Brief for United States" from the "Brief for United States" in the Court of Appeals; which last-mentioned brief (C. C. A., No. 956, pp. 66, 67) contains the following additional statements—also irreconcilable with the attitude and statements of the petition for rehearing.

“All of the tracts of land involved in this suit, for which decree has been entered for the Government for the lands or for the value thereof, were patented to the Southern Pacific Railroad Company as part of the lands inuring to it under its grant of March 3, 1871, and that fact is expressly found in the final decree of the Circuit Court, as to which finding no assignment of errors, or complaint, has been made. (Record, pp. 201 to 250.) * * *

If those particular patents were void, it is not important whether or not the Southern Pacific might have selected those lands and might have secured an approval of such selections under any other grant, because they were not so selected, nor was any such selection ever approved.”

It is respectfully asked that the order granting rehearing be vacated.

WM. SINGER, Jr.,
Attorney for Defendants.

Service of within motion to vacate order for rehearing, and receipt of copy thereof, admitted this 9th day of August, 1906.

JOS. H. CALL,
Special U. S. District Attorney.

[Endorsed]: No. 1114. United States Circuit Court, Southern District of California, Southern Division. United States, vs. Southern Pacific Rail-

road Co. et al. Motion to Vacate Order for Rehearing. Filed Aug. 9, 1906. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm. Singer, Jr., 72 San Pablo Ave., Oakland, Cal.

At a stated term, to wit, the July Term, A. D. 1906, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, held at the courtroom, in the city of Los Angeles, on Thursday, the twenty-sixth day of November, in the year of our Lord one thousand nine hundred and six. Present: The Honorable ERSKINE M. ROSS, Circuit Judge.

No. 1114.

THE UNITED STATES,

Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY and Others,

Defendants.

Order Submitting Motion for Order Vacating Order Granting Rehearing.

On motion of J. H. Call, Esq., of counsel for complainants, and it being made to appear to the Court that counsel for defendants consents thereto, it is

now by the Court ordered that the motion for an order vacating the order heretofore made and entered herein for a rehearing in the above-entitled cause be, and the same hereby is, submitted to the Court for its consideration and decision on the papers now on file in said cause.

*In the United States Circuit Court, Ninth Circuit,
Southern District of California.*

No. 1114.

UNITED STATES OF AMERICA,

Complainants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,
D. O. MILLS and HOMER S. KING, Trus-
tees, and CENTRAL TRUST COMPANY
OF NEW YORK,

Defendants.

Petition for, and Order Allowing Appeal.

To the Judges of the United States Circuit Court,
Ninth Circuit, Southern District of California.

The United States of America, conceiving themselves aggrieved by the decree made and entered herein on the 18th day of March, 1907, appeal from the said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and file herewith their

assignment of errors, asserted and intended to be urged upon appeal, and they pray that their appeal may be allowed; and further pray that upon this appeal being allowed, that all proceedings in this cause may be stayed, pending such appeal.

Dated this 18th day of March, 1907.

JOSEPH H. CALL,

Special Assistant United States Attorney and of
Counsel for United States.

Order Allowing Same.

The foregoing petition for appeal by the United States and prayer of supersedeas are allowed and granted.

Dated this 18th day of March, 1907.

ROSS,

Circuit Judge.

[Endorsed]: No. 1114. In the United States Circuit Court, Ninth Circuit, Southern District of California, United States of America, Complainants, vs. Southern Pacific Railroad Co. et al., Defendants. Petition for and Order Allowing Appeal. Filed Mar. 18, 1907. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

*In the United States Circuit Court, Ninth Circuit,
Southern District of California.*

No. 1114.

UNITED STATES OF AMERICA,

Complainants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,
D. O. MILLS, and HOMER S. KING, Trus-
tees, and CENTRAL TRUST COMPANY
OF NEW YORK,

Defendants.

Assignment of Errors.

The United States, in connection with their petition for appeal therein, present and file therewith their assignment of errors, as to which matters and things they say that the decree entered herein on March 18th, 1907, is erroneous, to wit:

First.—The Court erred in adjudging that the act of Congress approved July 6, 1886 (24 Stats. L. 123), forfeiting to the United States, for the use and benefit of the United States the lands and rights to lands, granted to the Atlantic and Pacific Railroad Company by the act of Congress of July 27, 1866, on account of the failure to construct said railroad, operated to empower or permit the Southern Pacific

Railroad Company to select as indemnity under its grant of the same date, by the same act, any of the lands within the place or granted limits of said grant to said Atlantic and Pacific Railroad Company.

Second.—The Court erred in adjudging that the right to select indemnity lands, conferred by section 3 of the act of Congress approved July 27, 1866, granting lands in aid of the Atlantic and Pacific Railroad Company and the Southern Pacific Railroad Company, authorized or empowered said Southern Pacific Railroad Company to select as indemnity any of the lands within the granted or place limits of the said grant to the Atlantic and Pacific Railroad Company, either before or after the forfeiture of said grant to said Atlantic and Pacific Railroad Company.

Third.—The Court erred in adjudging that the provisions of section 3 of said act of Congress of July 27th, 1866, authorizing the Southern Pacific Railroad Company to select certain lands as indemnity under the direction of the Secretary of the Interior in lieu of lands which prior to definite location of the road had been “granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of,” and designating the lands so selected to be “other lands in alternate sections and designated by odd numbers not more than ten miles beyond the limits of said alternate sections and

not including the reserved numbers," authorized or empowered said company to select, or the Secretary of the Interior to approve the selection of, any lands within the granted or place limits of the grant reserved for said Atlantic and Pacific Railroad Company, by said act of July 27, 1866, those sections being "reserved numbers" within the meaning of said act.

Fourth.—The Court erred in refusing to quiet the title of the United States to unpatented lands, and refusing to vacate patents to lands patented, situated within the granted or place limits of the grant to the Atlantic and Pacific Railroad Company by the act of July 27, 1866, which were also within the indemnity limits of the grant to the Southern Pacific Railroad Company, by the same act.

Wherefore, the United States prays that said decree may be reversed in said particulars and that the United States be granted the relief therein set forth.

JOSEPH H. CALL,

Special Assistant United States Attorney and of
Counsel for the United States.

[Endorsed]: No. 1114. In the United States Circuit Court, Ninth Circuit, Southern District of California. United States of America, Complainants, vs. Southern Pacific Railroad Co. et al., Defendants. Assignment of Errors. Filed Mar. 18, 1907. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

*In the United States Circuit Court, Ninth Circuit,
Southern District of California, Southern Division.*

No. 1114.

UNITED STATES OF AMERICA,

Complainants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY

and Others,

Defendants.

**Order Allowing Appeal Nunc Pro Tunc as of March
18, 1907, Correcting Petition for Appeal, etc.**

On this 21st day of March, 1907, in open court, the United States appeared by Mr. Joseph H. Call, Special Assistant United States Attorney, and moves the Court for an order nunc pro tunc, correcting the order allowing the appeal in this cause as of date of March 18th 1907, and it appearing to the Court that the United States duly appealed from the final decree in said cause, entered on said March 18th, 1907, and filed with the petition for appeal therein, an assignment of errors, and that the Court duly allowed said appeal, and it further appearing that by clerical error the papers in said cause were erroneously numbered as in cause "No. 1196," and should have been in this cause, to wit, No. 1114:

Now, therefore, it is ordered, that the appeal in this said cause, No. 1114, be allowed nunc pro tunc as of date of March 18th, 1907, and that the clerk of the court be, and hereby is, directed to correct the petition for appeal, order allowing appeal, assignment of errors and the citation heretofore issued, so as to number the same, and each thereof, No. 1114 instead of No. 1196.

Upon like motion it is further ordered, that in transcribing the record upon appeal in this cause, and in printing the record thereof, it shall not be necessary to copy, or otherwise reprint the map in the record, marked "Complainants' Exhibit No. "F," but the said map shall be attached to and transmitted with the record as an original document.

ROSS,
Circuit Judge.

[Endorsed]: No. 1114. In the United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division. United States of America, Complainants, vs. Southern Pacific Railroad Company et al., Defendants. Order. Filed Mar. 21, 1907. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

*In the Circuit Court of the United States, of the
Ninth Judicial Circuit, in and for the Southern
District of California, Southern Division.*

No. 1114.

UNITED STATES OF AMERICA,

Complainants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,

D. O. MILLS and HOMER S. KING, Trus-
tees, and CENTRAL TRUST COMPANY
OF NEW YORK,

Defendants.

Clerk's Certificate to Record.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, do hereby certify the foregoing three hundred and fifty-five (355) typewritten pages, numbered from 1 to 355, inclusive, and comprised in one volume, to be a full, true and correct copy of the record and pleadings, opinions of the Court, and of all proceedings and papers upon which the final decree entered on the 18th day of March, 1907 was made—excepting therefrom complainants' original Exhibit "F" (certified copy of diagram from the General

Land Office showing lines of location of the railroads of the Southern Pacific Railroad Co., under grants of July 27, 1866, and March 3, 1871, and of the Atlantic and Pacific Railroad Co. under grant of July 27, 1866, and showing established twenty and thirty mile limits), which said original exhibit is by order of Court transmitted herewith and made part hereof—and also of the assignment of errors, petition for and order allowing appeal in the above and therein-entitled cause; and that the same together constitute the transcript of the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in said cause.

I do further certify that the cost of the foregoing record is \$217.80. The amount thereof is to be paid me by the United States of America, the appellant in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, this 30th day of March, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty-first.

[Seal]

WM. M. VAN DYKE,

Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

[Endorsed]: No. 1453. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. The Southern Pacific Railroad Company, D. O. Mills and Homer S. King, Trustees, and The Central Trust Company of New York, Appellees. Transcript of Record. Upon Appeal from the United States Circuit Court for the Southern District of California, Southern Division.

Filed April 8, 1907.

F. D. MONCKTON,
Clerk.

CHARTS

TOO

LARGE

FOR

FILMING

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1453.

THE UNITED STATES OF AMERICA, Appellant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al., Appellees.

Certificate of Clerk U. S. Circuit Court of Appeals to Printed Transcript of Record and Complainant's Exhibit "F."

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing four hundred and seventy-seven (477) pages, numbered from one (1) to four hundred and seventy-seven (477), both inclusive, to be a true copy of the printed Transcript of Record upon Appeal from the United States Circuit Court for the Southern District of California, Southern Division, and Complainant's Original Exhibit "F" in the above-entitled case as the originals and copies thereof were printed under my supervision pursuant to the provisions of rule 23 of the rules of practice of the said the United States Circuit Court of Appeals for the Ninth Circuit, and as the said originals remain of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this eighteenth day of August, A. D. 1909.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1453.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and Homer S. King, Trustees, and The Central Trust Company of New York, Cross-appellants,

vs.

THE UNITED STATES OF AMERICA, Cross-appellee.

TRANSCRIPT OF PRINTED RECORD ON CROSS-APPEAL.

Upon Cross-appeal from the United States Circuit Court for the Southern District of California, Southern Division.

Filed Sep. 7, 1907.

F. D. MONCKTON, *Clerk.*

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1453.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and
Homer S. King, Trustees, and The Central Trust Company of
New York, Cross-appellants,

vs.

THE UNITED STATES OF AMERICA, Cross-appellee.

Transcript of Record on Cross-appeal.

Upon Cross-appeal from the United States Circuit Court for the
Southern District of California, Southern Division.

United States Circuit Court of Appeals for the Ninth Circuit.

SOUTHERN PACIFIC RAILROAD COMPANY et al., Appellants,

vs.

UNITED STATES OF AMERICA, Appellees.

Order Extending Time to File Record on Cross-appeal.

Good cause appearing therefor, it is hereby ordered that the time heretofore allowed said appellants to file the record thereof and to docket the case with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, be, and the same hereby is enlarged and extended to and including the 15th day of August, 1907.

Dated at Los Angeles, Cal., June 8th, 1907.

ROSS,
Circuit Judge.

[Endorsed:] No. —. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Railroad Company, et al., Appellants, vs. United States of America, Appellees. Filed Jun- 10, 1907. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

(No. 1114, Circuit Court.)

SOUTHERN PACIFIC RAILROAD COMPANY et al., Appellants,

vs.

UNITED STATES OF AMERICA, Appellees.

Order Extending Time to File Record on Cross-appeal.

Good cause appearing therefor, it is hereby ordered, that the time heretofore allowed said appellant to file the record thereof and to

docket the case with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, be, and the same hereby is enlarged and extended to and including the 1st day of September, 1907.

Dated at Los Angeles, Cal., August 12th, 1907.

ROSS,
Circuit Court.

[Endorsed:] No. —. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Railroad Company, et al., Appellants, vs. United States of America, Appellees. Order Extending Time. Filed Aug. 14, 1907. F. D. Monckton, Clerk.

[Endorsed:] No. 1453. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Railroad Company, et al. vs. United States of America. Two Orders Enlarging, etc. Time to File Record on Cross-Appeal. Re-filed Aug. 17, 1907. F. D. Monckton, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division.

No. 1114.

UNITED STATES, Complainant and Appellee.

vs.

SOUTHERN PACIFIC RAILROAD COMPANY et al., Defendants and Appellants.

Citation (Original).

To United States of America, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, on June 15th, 1907, pursuant to the appeal of the hereinafter named defendants from the decree of the above-mentioned Court, rendered and entered on March 18th, 1907, in the above-entitled cause, being case No. 1114, wherein the United States is complainant and Southern Pacific Railroad Company, D. O. Mills and Homer S. King as Trustees, and Central Trust Company of New York as Trustee, are defendants, to show cause, if any there be, why the said decree should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the city of Los Angeles, on May 17th, 1907.

ERSKINE M. ROSS,
*Judge of the United States Circuit Court, Ninth
Circuit, Southern District of California.*

Service, by copy, of the within citation is hereby admitted May 23d, 1907.

ROBT T. DEVLIN,
United States Attorney, Attorney for Appellee.

[Endorsed:] No. 1114. U. S. Circuit Court, Southern District of California, Southern Division. United States vs. Southern Pacific Railroad Co. et al. Citation. Filed May 27, 1907. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm. Singer, Jr., Attorney for Defendants.

United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division.

No. 1114.

UNITED STATES, Complainant and Appellee,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY et al., Defendants and Appellants.

Petition for Appeal.

The defendants, Southern Pacific Railroad Company, D. O. Mills and Homer S. King, as trustees, and Central Trust Company of New York as trustee, conceiving themselves aggrieved by the decree made and entered herein on March 18th, 1907, appeal from the said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in their assignment of errors, filed herewith.

The said defendants pray that their appeal be allowed; that the transcript of record filed or to be filed by complainant, United States, on its appeal herein to the said United States Circuit Court of Appeals may be used by them (these defendants) on the hearing and for all purposes of this appeal the same as if such transcript were filed by them (these defendants); and that upon this Court's approval of a good and sufficient bond to be given by them (these defendants), all proceedings in this cause, and upon the said decree, be stayed, pending this appeal.

Dated May 17th, 1907.

WM. SINGER, JR.,

Attorney for the Defendants.

WM. F. HERRIN,

Counsel for the Defendants.

Order Allowing Appeal.

The foregoing claim of appeal, and prayer for supersedeas, are allowed and granted; the supersedeas to take effect upon the filing of a good and sufficient bond, approved by this Court, in the sum of \$500.00, conditioned that the defendant shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good.

It is further ordered, that the transcript of record filed or to be filed in the said United States Circuit Court of Appeals by complain-

ant United States, on and in connection with the appeal heretofore granted by this Court unto said complainant herein, may be used on both appeals alike, and this appeal of these defendants shall be heard thereon in the same manner as if such record had been filed by the appellants in both appeals; and that a true copy of this petition and order, assignment of errors filed therewith, and of all other documents and proceedings in the case not included in the said transcript of record, be sent to the said United States Circuit Court of Appeals, under the seal of this Court and the hand of the clerk thereof.

So ordered, on May 17th, 1907.

ROSS,
Circuit Judge.

[Endorsed:] No. 1114. U. S. Circuit Court, Southern District of California, Southern Division. United States vs. Southern Pacific Railroad Co. et al. Filed May 17, 1907. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Petition and Order Granting Appeal of Defendants. Wm. Singer, Jr., Attorney for Defendants. Room 842, Flood Building, San Francisco.

United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division.

No. 1114.

UNITED STATES, Complainant and Appellee,
vs.

SOUTHERN PACIFIC RAILROAD COMPANY et al., Defendants and Appellants.

Assignment of Errors.

The defendants, Southern Pacific Railroad Company, D. O. Mills and Homer S. King, as trustees, and Central Trust Company of New York, as trustee, by their undersigned attorney and counsel, in connection with their petition and appeal herein, say that the decree rendered and entered by the said Court on March 18th, 1907, in the above-entitled case No. 1114, is erroneous and against their just rights in the following particulars:

1st. The Court erred in holding and deciding that the decree in suit No. 184, referred to in "Subdivision V" of the said decree, is a final or conclusive adjudication against the right of the Southern Pacific Railroad Company to thereafter select the lands described in said "Subdivision V," under direction of the Secretary of Interior, as indemnity lands which the act of Congress approved July 27th, 1866, referred to in said decree, authorized the said company to so select. And herein the Court erred.

(a) In decreeing or ordering cancellation or annulment of all, or any, such indemnity selections, or applications, found by the Court to have been made by the Southern Pacific Railroad Com-

pany since date of said decree in case No. 184 and to be pending before the Secretary of Interior for approval, for any or all lands described in said "Subdivision V" of the decree; and

(b) In decreeing or ordering that these defendants, or any of them, are enjoined from asserting or claiming any right, title, or interest in or to the said lands.

2d. The Court erred in not ordering the bill of complaint dismissed as to all lands described in "Subdivision V" of the said decree.

Wherefore, these defendants pray that the said decree be corrected and reversed in and as to the said particulars.

WM. SINGER, JR.,
Attorney for Defendants.

WM. F. HERRIN,
Counsel for the Defendants.

[Endorsed:] No. 1114. U. S. Circuit Court, Southern District of California, Southern Division. United States vs. Southern Pacific Railroad Co. et al. Filed May 17, 1907. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Assignment of Errors. Wm. Singer, Jr., Attorney for Defendants. Room 842, Flood Building, San Francisco.

United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division.

No. 1114.

UNITED STATES, Complainant and Appellee,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY et al., Defendants and Appellants.

Bond on Appeal.

We, Walter F. Parker and A. M. Jamison, both of Los Angeles County, California, are held and firmly bound to pay unto the United States, as complainant above named, the sum of five hundred (\$500.00) dollars; for payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

The defendants, Southern Pacific Railroad Company, D. O. Mills and Homer S. King, as trustees, and Central Trust Company of New York, as trustee, have been allowed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and a supersedeas, from the decree entered in the above-entitled cause on March 18th, 1907; and the condition of this obligation is, that if the defendants shall prosecute their said appeal to effect, and answer all

damages and costs if they fail to make their said appeal good, then this obligation shall be void—otherwise to remain in full force.

Signed and sealed on May 17th, 1907.

WALTER F. PARKER. [SEAL.]

A. M. JAMISON. [SEAL.]

STATE OF CALIFORNIA,

County of Los Angeles, ss:

Walter F. Parker and A. M. Jamison being duly sworn, each for himself says: I am one of the sureties on the foregoing bond, and subscribed my name thereto. I am a resident of and freeholder within the county of Los Angeles, State of California, and am worth the sum of five hundred (\$500.00) dollars, over and above my just debts and liabilities, in property within the said county which is not exempt from execution.

WALTER F. PARKER.

A. M. JAMISON. [SEAL.]

Subscribed and sworn to before me on May 17th, 1907.

[SEAL.]

M. I. DAVIS,

Notary Public in and for Los Angeles County, California.

The foregoing bond approved on May 17th, 1907.

ROSS,

Circuit Judge.

[Endorsed:] No. 1114. U. S. Circuit Court, Southern District of California, Southern Division. United States vs. Southern Pacific Railroad Co. et al. Filed May 17, 1907. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Bond on Appeal. Wm. Singer, Jr., Attorney for Defendants. Room 842, Flood Building, San Francisco.

In the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California, Southern Division.

No. 1114.

THE UNITED STATES OF AMERICA, Complainants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY (a Corporation), D. O. Mills and Homer S. King, Trustees, and the Central Trust Company of New York, Trustee, Defendants.

Clerk's Certificate to Record on Cross-appeal.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, do hereby certify the foregoing seven (7) typewritten pages numbered from one (1) to seven (7)

both inclusive and comprised in one volume, to be a full, true and correct copy of the petition for appeal, order allowing appeal, assignment of errors, and bond on appeal, filed by and on behalf of the defendants in the above-entitled cause, and that the same, together with the transcript of record filed in the United States Circuit Court of Appeals for the Ninth Circuit by the complainants, The United States of America, on and in connection with the appeal heretofore granted by this Court unto said complainants herein, constitute the transcript of the record on appeal by the defendants above named to the United States Circuit Court of Appeals for the Ninth Circuit in said cause.

I do further certify that the cost of the foregoing record is \$420, the amount whereof is to be paid me by the Southern Pacific Railroad Company, one of the appellants in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California, this 14th day of August, in the year of our Lord, one thousand nine hundred and seven and of the Independence of the United States of America, the one hundred and thirty-second.

[SEAL.]

WM. M. VAN DYKE,

*Clerk of the Circuit Court of the United States
of America of the Ninth Judicial Circuit
in and for the Southern District of Cali-
fornia.*

[Endorsed:] No. 1453. United States Circuit Court of Appeals for the Ninth Circuit. The Southern Pacific Railroad Company, D. O. Mills, and Homer S. King, Trustees, and The Central Trust Company of New York, Cross-Appellants, vs. The United States of America, Cross-Appellee. Transcript of Record on Cross-Appeal. Upon Cross-Appeal from the United States Circuit Court for the Southern District of California, Southern Division. Filed August 17, 1907. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1453.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al., Cross-appellants,
vs.

THE UNITED STATES OF AMERICA, Cross-appellee.

*Certificate of Clerk U. S. Circuit Court of Appeals to Printed Trans-
cript of Record on Cross-appeal.*

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing fifteen (15) pages, numbered from one (1) to fifteen (15), both inclusive, to be a true copy of the printed Transcript of Record upon Cross-Appeal from the United States Circuit Court for the Southern

Division of California, Southern Division in the above-entitled cause as the original and copies thereof were printed under my supervision pursuant to the provisions of rule 23 of the rules of practice of the said the United States Circuit Court of Appeals for the Ninth Circuit, and as the said original remains of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this eighteenth day of August, A. D. 1909.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1453.

THE UNITED STATES OF AMERICA, Appellant and Cross-Appellee,
vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al., Appellees and
Cross-Appellants.

Addenda.

*Proceedings Had in the United States Circuit Court of Appeals for
the Ninth Circuit.*

At a stated term, to wit: the October term, A. D. 1907, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the Court Room, in the City and County of San Francisco, on Monday, the seventh day of October, in the year of our Lord one thousand nine hundred and seven.

Present: The Honorable William B. Gilbert, Circuit Judge; Honorable Erskine M. Ross, Circuit Judge; Honorable William W. Morrow, Circuit Judge.

No. 1453.

THE UNITED STATES OF AMERICA, Appellant and Cross-Appellee,
vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al., Appellees and
Cross-Appellants.

Order of Submission.

Pursuant to the stipulation of counsel for the respective parties, filed September 20, 1907, and upon motion of Mr. Alfred P. Black, Assistant United States Attorney, ordered, appeal and cross-appeal in the above-entitled cause, submitted to Gilbert and Morrow, Circuit Judges, and De Haven, District Judge, for consideration and decision, on briefs, 30 X 30 X 30.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1453.

THE UNITED STATES OF AMERICA, Appellant and Appellee,
vs.
THE SOUTHERN PACIFIC RAILROAD CO., Appellants and Appellee.

Appeal from the United States Circuit Court, Ninth Circuit,
Southern District of California.

Robt. T. Devlin, United States Attorney, and Geo. Clark, Assistant United States Attorney, Attorneys for the United States; William Singer, Jr., and Wm. F. Herrin, Attorneys for the Southern Pacific Railroad Company, and other Defendants.

Before Gilbert and Morrow, Circuit Judges, and De Haven, District Judge.

DE HAVEN, *District Judge*:

This action was brought by the United States against the Southern Pacific Railroad Company and other defendants, to obtain a decree quieting its title to a large body of land, described in the bill of complaint, and for an accounting.

Upon the pleadings and proofs a decree was entered in the Circuit Court quieting the title of the United States to certain of the lands, described in the bill, and dismissing the bill as to the remainder of the lands in controversy. Both parties have appealed to this Court.

The following facts are shown by the record.

The lands in controversy are within the primary limits of the grant made July 27, 1866, (14 Stat. 292,) to the Atlantic and Pacific Railroad Company, and are also within the indemnity limits of the grant made to the Southern Pacific Railroad Company by the same act. The Atlantic and Pacific Railroad Company failed to construct a road over any portion of the line definitely located by it, in California, and Congress on July 6, 1886, (24 Stat. 123), forfeited the grant made to that company, in so far as the same covered lands "adjacent to and coterminous with the uncompleted portions of the main line of its road, and embraced within the grant and indemnity limits as contemplated to be constructed under and by the provisions of the said act of July 27, 1866."

After the forfeiture of the Atlantic and Pacific Railroad Company's grant, and the restoration of the lands embraced therein, to the public domain, the Southern Pacific Railroad Company selected the lands in controversy, as indemnity lands under the grant made to it by the act of July 27, 1866 (14 Stat. 292), and the United States, prior to the commencement of this action, issued its patents to the defendant Railroad Company for part of the lands so selected and that company's application to select the remainder of the lands

in controversy, as indemnity lands, is pending in the Department of the Interior.

1. It is claimed by the United States, on its appeal, that the Southern Pacific Railroad Company, could not legally select as indemnity, under its grant of July 27, 1866, lands within the place limits of the forfeited Atlantic and Pacific grant, of the same date; that when the grant to the Atlantic and Pacific Railroad Company was forfeited, the forfeiture was for the benefit of the United States, alone, and the Southern Pacific Railroad Company acquired no benefit or advantage from such forfeiture.

In support of this contention the cases of the United States v. Southern Pacific Railroad Company, 146 U. S. 570; United States v. Colton Marble and Lime Co., 148 U. S. 615, and Southern Pacific Railroad Co., v. United States, 168 U. S. 1, are cited.

We do not think these cases sustain the proposition for which the United States contends.

The first was an action by the United States to quiet its title to certain lands claimed by the Southern Pacific Railroad Company, under the grant made to it by the act of March 3, 1871, and the lands in controversy were situate within the primary limits of that grant, and of the grant made to the Atlantic and Pacific Railroad Company by the act of July 27, 1866. It was held that both of the grants were *in presenti*, and that title to the lands in controversy, in that case, passed to the Atlantic and Pacific Railroad Company, under its senior grant; and that when such grant was forfeited the title to the lands within its primary limits did not vest in the Southern Pacific Railroad Company, under its grant of March 3, 1871.

In the case of the United States v. Colton Marble and Lime Co., 146 U. S. 615, the lands in suit were within the granted limits of the Southern Pacific Railroad Company, under its grant of March 3, 1871, and within the indemnity limits of the prior grant made to the Atlantic and Pacific Railroad Company, and it was held by the Court, as stated in the syllabus, of its opinion:

"The proviso in the act of March 3, 1871, 16 Stat. 573, c. 122 granting lands in aid of the construction of the Southern Pacific Railroad Company, that the grant should 'in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company,' operated to exempt the indemnity lands of the Atlantic and Pacific Railroad Company from the grant to the Southern Pacific Company."

So also in the case of the Southern Pacific Railroad Co., v. The United States, 168 U. S. 1, the Southern Pacific Railroad Company claimed title to the land there in controversy, under its grant of March 3, 1871, and the question whether that company had the right to make indemnity selections under its grant of July 27, 1866, of lands lying within the granted limits of the forfeited grant to the Atlantic and Pacific Railroad Company, was not discussed by the Court.

The question to be here decided does not arise under the Act of March 3, 1871, but relates to the right of the Southern Pacific Railroad Company, to select the land in controversy as indemnity lands,

under the act of July 27, 1866, (14 Stat. 292). By that act there was granted to that company, "every alternate section of public land, not mineral, designated by odd numbers, to the amount of * * * ten alternate sections of land per mile on each side of said railroad line wherever it passed through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office; * * * and whenever prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers."

We think under this statute the defendant railroad company was granted the right to select as indemnity, for lands lost within the primary limits, any alternate sections of land within the indemnity limits of the grant, non-mineral in character and not granted, sold, reserved, or otherwise appropriated at the date of the selection. In other words the right of the defendant railroad company to make selections of indemnity lands under its grant depends upon the status of the lands at the date of selection, and not upon their status at the date of the act making the grant. This conclusion is supported by the cases of *Ryan v. Railroad Co.*, 99 U. S. 382; *United States v. Central Pac. Railroad Co.*, 26 Fed. 479.

There is nothing in the act above quoted which indicates any intention upon the part of Congress to exclude from selection as indemnity lands, any land which at the date of selection was non-mineral public land, and not otherwise appropriated or disposed of.

In *Barney v. Winona & St. Peter Railroad Co.*, 117 U. S. 228, the Supreme Court in construing a grant similar to that contained in the act of July 27, 1866, said:

"In the construction of land grant acts, in aid of railroads, there is a well established distinction observed between 'granted lands' and 'indemnity lands.' The former are those falling within the limits specially designated, and the title to which attaches when the lands are located by an approved and accepted survey of the line of the road filed in the Land Department as of the date of the act of Congress. The latter are those lands selected in lieu of parcels lost by previous disposition or reservation for other purposes, and the title to which accrues only from the time of their selection."

See also *United States v. Missouri, Kansas, Texas Railroad Co.*, 141 U. S. 358; *Southern Pacific v. Bell*, 183 U. S. 675.

Our conclusion upon this point is that the lands involved in the appeal of the United States were legally selected by the defendant railroad company, because at the date of their selection they were unappropriated public lands and that as to such lands, the bill was properly dismissed.

2. The question presented by the appeal of the Southern Pacific Railroad Company is as to the effect of a final decree rendered on July 19, 1894, in an action brought by the United States against the Southern Pacific Railroad Company, to quiet title to the lands involved in this appeal, and in which action it was adjudged that the United States was the owner in fee simple of said lands, and the decree further provided "that the defendants are and each of them is forever enjoined and restrained from * * * claiming or asserting any right, title or interest in or to the said lands, or any part thereof."

The contention of the Southern Pacific Railroad Company is that this decree does not bar its present assertion of title to the lands affected thereby, because the indemnity selections under which it now claims were not made until long subsequent to the entry of the decree referred to; and it is urged that by such selection the defendant has acquired a new title, one which it did not possess at the time of the rendition of the former decree, and therefore not concluded by it.

There is, of course, no denial of the general rule that a judgment in ejectment or other action affecting title to real estate does not deprive the party found without title of the right to acquire a new and distinct title; and when so acquired to assert the same without prejudice from the former suit, but that principle has no application here, because the title under which the defendant now claims has its origin in a statute granting it the right under certain conditions to acquire the title now asserted; and this statute was in force at the date of the commencement of the action in which the former decree was entered. The Railroad Company's contingent right to select and acquire title to the lands, in controversy in that action as in this, was an existing right which whether asserted or not at that time is concluded by the decree. The object of the suit in which the prior judgment was entered was to quiet the title of the United States against all claims of the defendant Southern Pacific Railroad Company, and the effect of the decree was to quiet the title of the United States against all claims of the defendant railroad company arising under any statute of the United States, then in force, and the Supreme Court in the case of the Southern Pacific R'd Co., v. The United States, 183 U. S. 519, referring to the cases of *United States v. Southern Pacific Railroad Co.*, 146 U. S. 570; *United States vs. Colton Marble and Lime Co.*, 146 U. S. 615, and the *United States v. Southern Pacific Railroad Co.*, 168 U. S. 1, said:

"Of course, the decrees that were rendered in those cases are conclusive of the title to the property involved in them, no matter what claims or rights either party may have had and failed to produce, but as to property which was not involved in those suits they are conclusive only as to the matters which were actually litigated and determined."

It may be stated as a well settled principle of law, that when the title of a defendant is challenged by an action to quiet title, he is required to plead the particular right, title or interest which he claims in the land and a final judgment in favor of the plaintiff is

res judicata as to every right which the defendant then had, whether asserted or not. The object of this rule is to put an end to litigation. *Dowell v. Appelgate*, 152 U. S. 327. *Cromwell v. County of Sac.* 94 U. S. 351; *United States v. California and Oregon Land Co.*, 192 U. S. 355.

It follows from what we have said that in our opinion the decree of the Circuit Court is right, and it is therefore affirmed.

(Endorsed:) Opinion. Filed Feb. 1, 1909. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1453.

THE UNITED STATES OF AMERICA, Appellant and Cross-Appellee,
vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and
Homer S. King, Trustees, and Central Trust Company of New
York, Appellees and Cross-Appellants.

Decree U. S. Circuit Court of Appeals.

Appeal from the Circuit Court of the United States for the Southern
District of California.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of California, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed.

(Endorsed:) Decree. Filed and entered. February 1, 1909.
F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

In Equity.

Case No. 1453.

SOUTHERN PACIFIC RAILROAD COMPANY et al., Appellants,
vs.

UNITED STATES OF AMERICA, Appellee.

In Equity.

UNITED STATES OF AMERICA, Appellant,
vs.

SOUTHERN PACIFIC RAILROAD COMPANY et al., Appellees.

Stipulation and Order Staying Issuance of Mandate.

It is hereby stipulated that issuance of all Mandates pursuant to the opinion and decree filed and entered on February 1st, 1909 in

the above-mentioned court and cause, be and is stayed for thirty days from July 31st, 1909; and that an order of said court may be made and entered accordingly.

WM. SINGER, JR., AND
D. V. COWDEN,
Attorneys for Appellants.
ROBT T. DEVLIN,
Attorney for Appellee.

It is ordered.

(Signed) MORROW, *Judge.*

(Endorsed:) Stipulation and Order Staying Issuance of Mandate. Filed Jul- 28, 1909. F. D. Monckton, Clerk.

Supreme Court of the United States.

No. 1453.

THE UNITED STATES OF AMERICA, Appellant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and
Homer S. King, Trustees, and The Central Trust Company of
New York, Appellees.

Petition for Appeal.

To the Honorable Melville W. Fuller, Chief Justice of the United States, or to any Associate Justice of the Supreme Court of the United States:

Now comes the United States of America, appellant above named, by its undersigned attorney, and complains that in the record and proceedings, and also in the rendition of the decree of the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, in the State of California, in the cause styled as above and numbered 1453, on the 1st day of February, A. D. 1909, affirming the decree of the United States Circuit Court, Southern District of California, Ninth Circuit, in said cause, manifest error has intervened to the great damage of the petitioner; that the jurisdiction of the United States Circuit Court, Southern Division, Southern District of California, Ninth Circuit, depended upon the fact that the said cause involved the construction of an Act of Congress granting lands to the Southern Pacific Railroad Company to aid in the construction of its railroad; that the amount involved therein and the matter in controversy exceeds the sum of one thousand dollars besides costs, and this is not a case in which the jurisdiction of the Circuit Court of Appeals is final.

Wherefore, petitioner prays for the allowance of an appeal to the end that the cause may be carried to the Supreme Court of the United States, and petitioner prays for such other process as is re-

quired to perfect the appeal prayed for, to the end that the error therein may be corrected.

ROBT T. DEVLIN,
United States Attorney, Attorney for Petitioner.

(Endorsed:) Petition of U. S. for Appeal to Supreme Court U. S. Filed Aug. 6, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

Supreme Court of the United States.

THE UNITED STATES OF AMERICA, Appellant,
vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and
Homer S. King, Trustees, and The Central Trust Company of
New York, Appellees.

Order Allowing Appeal.

The foregoing claim of appeal is allowed and granted.

It is further ordered that a true copy of the record, this petition and order, the assignment of errors filed therewith, and all other papers and proceedings in the case, be sent to the Supreme Court of the United States, under the seal of the United States Circuit Court of Appeals for the Ninth Circuit and the hand of the Clerk thereof.

So ordered, on August 6th 1909.

JOSEPH McKENNA,
*Associate Justice of the Supreme Court
of the United States.*

(Endorsed:) Order Allowing Appeal of U. S. Filed Aug. 6, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

No. 1453.

THE UNITED STATES OF AMERICA, Appellant,
vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and
Homer S. King, Trustees, and Central Trust Company of New
York, Appellees.

Assignment of Errors.

The United States, in connection with their petition for appeal therein, present and file therewith their assignment of errors, as to which matters and things they say that the judgment decree entered herein on February 1st 1909, is erroneous, to-wit:

First. The Court erred in adjudging that the act of Congress approved July 6, 1886 (24 Stats. L. 123), forfeiting to the United States, for the use and benefit of the United States the lands and

rights to lands, granted to the Atlantic and Pacific Railroad Company by the act of Congress of July 27, 1866, on account of the failure to construct said railroad, operated to empower or permit the Southern Pacific Railroad Company to select as indemnity under its grant of the same date, by the same act, any of the lands within the place or granted limits of said grant to said Atlantic and Pacific Railroad Company.

Second. The Court erred in adjudging that the right to select indemnity lands, conferred by section 3 of the act of Congress approved July 27, 1866, granting lands in aid of the Atlantic and Pacific Railroad Company and the Southern Pacific Railroad Company, authorized or empowered said Southern Pacific Railroad Company to select as indemnity any of the lands within the granted or place limits of the said grant to the Atlantic and Pacific Railroad Company, either before or after the forfeiture of said grant to said Atlantic and Pacific Railroad Company.

Third. The Court erred in adjudging that the provisions of section 3 of said act of Congress of July 27th 1866, authorizing the Southern Pacific Railroad Company to select certain lands as indemnity under the direction of the Secretary of the Interior in lieu of lands which prior to definite location of the road had been "granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of," and designating the lands so selected to be "other lands in alternate sections and designated by odd numbers not more than ten miles beyond the limits of said alternate sections and not including the reserved numbers," authorized or empowered said company to select, or the Secretary of the Interior to approve the selection of, any lands within the granted or place limits of the grant reserved for said Atlantic and Pacific Railroad Company, by said act of July 27, 1866, those sections being "reserved numbers" within the meaning of said act.

Fourth. The Court erred in refusing to quiet the title of the United States to unpatented lands, and refusing to vacate patents to lands patented, situated within the granted or place limits of the grant to the Atlantic and Pacific Railroad Company by the act of July 27, 1866, which were also within the indemnity limits of the grant to the Southern Pacific Railroad Company, by the same act.

Wherefore, the United States prays that said decree may be reversed in said particulars and that the United States be granted the relief therein set forth.

ROBT T. DEVLIN,

United States Attorney, Attorney for Appellant.

C.

(Endorsed:) Assignment of Errors. Filed Aug. 6, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

Supreme Court of the United States.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and
Homer S. King, Trustees, and The Central Trust Company of
New York, Appellants,

VS.

THE UNITED STATES OF AMERICA, Appellee.

Petition for Appeal.

To the Honorable Melville W. Fuller, Chief Justice of the United States, or to any Associate Justice of the Supreme Court of the United States:

Now come the Southern Pacific Railroad Company, D. O. Mills and Homer S. King as Trustees, and Central Trust Company of New York as Trustee, appellants above-named, by their undersigned attorneys and complain that in the record and proceedings, and also in the rendition of the decree of the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, in the State of California, in the cause styled as above and numbered 1453, on the 1st day of February, A. D. 1909, affirming the decree of the United States Circuit Court, Southern Division, Southern District of California, Ninth Circuit, in said cause, manifest error has intervened to the great damage of the petitioners; that the jurisdiction of the United States Circuit Court, Southern Division, Southern District of California, Ninth Circuit, depended upon the fact that the said cause involved the construction of an Act of Congress granting lands to the Southern Pacific Railroad Company to aid in the construction of its railroad; that the amount involved therein and the matter in controversy exceeds the sum of one thousand dollars and costs, and this is not a case in which the jurisdiction of the Circuit Court of Appeals is final.

Wherefore petitioners pray for the allowance of an appeal to the end that the cause may be carried to the Supreme Court of the United States, and petitioners pray for such other process as is required to perfect the appeal prayed for, to the end that the error therein may be corrected.

P. F. DUNNE,
WM. SINGER, JR.,
Attorneys for Petitioners.

Order Allowing Appeal.

The foregoing claim of appeal is allowed and granted, to take effect upon the filing of a good and sufficient bond fixed in the sum of Five hundred dollars, conditioned as the law directs and duly approved.

It is further ordered that a true copy of the record, this petition and order, the assignment of errors filed therewith, and of all

other papers and proceedings in the case, be sent to the Supreme Court of the United States, under the seal of the United States Circuit Court of Appeals for the Ninth Circuit and the hand of the Clerk thereof.

So ordered, on August 4th 1909.

(Signed)

JOSEPH McKENNA,
*Associate Justice of the Supreme Court
of the United States.*

(Endorsed:) Petition for Appeal to Supreme Court U. S. and Order Allowing Appeal. Filed Aug. 4, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

Supreme Court of the United States.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and Homer S. King, Trustees, and The Central Trust Company of New York, Appellants.

vs.

THE UNITED STATES OF AMERICA, Appellee.

Assignment of Errors.

The appellants, Southern Pacific Railroad Company, D. O. Mills and Homer S. King as trustees, and Central Trust Company of New York as trustee, by their undersigned attorneys, in connection with their petition and appeal herein, say that the decree rendered and entered on the 1st day of February, 1909, by the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, in the State of California, in the cause styled as above and numbered 1453, affirming the decree of the United States Circuit Court, Southern District of California, Ninth Circuit, Southern Division, in said cause, is erroneous and against their just rights in the following particulars:

1st. The Court erred in affirming the decision in holding and deciding that the decree in suit No. 184, referred to in "Subdivision V" of said decree of the Circuit Court, is a final and conclusive adjudication against the right of the Southern Pacific Railroad Company to thereafter select the lands described in said "Subdivision V," under direction of the Secretary of the Interior, as indemnity lands which the Act of Congress approved July 27th 1866, referred to in said decree, authorized the said Company to select. And herein the Court erred:

(a). In affirming the decree or order for the cancellation or annulment of all, or any, such indemnity selections, or applications, found by the said Circuit Court to have been made by the Southern Pacific Railroad Company since date of said decree in case No. 184 and to be pending before the Secretary of — Interior for approval, for any or all lands described in said "Subdivision V" of said decree: and

(b). In affirming the decree or order that these appellants, or any of them, be and are enjoined from asserting or claiming any right, title or interest in or to the said lands.

2nd. The Court erred in failing to reverse said decree for not ordering the bill of complaint dismissed as to all lands described in "Subdivision V" of said decree.

Wherefore, these appellants pray that the decree of the aforesaid Circuit Court of Appeals be corrected and reversed in and as to the said particulars.

P. F. DUNNE,

WM. SINGER, JR.,

Attorneys for Appellants.

(Endorsed:) Assignment of Errors. Filed Aug. 4, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

Supreme Court of the United States.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and
Homer S. King, Trustees, and The Central Trust Company of
New York, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee.

Bond on Appeal.

The National Surety Company, a corporation organized under the laws of the State of New York, is held and firmly bound to pay unto the United States of America, as appellee above-named, the sum of \$500.00; for payment of which, well and truly to be made, it binds itself, its successors and assigns, firmly by these presents.

The appellants, Southern Pacific Railroad Company, D. O. Mills and Homer S. King as trustees, and Central Trust Company of New York as trustee, have been allowed an appeal to the Supreme Court of the United States, from the decree made and entered on February 1st 1909, in the United States Circuit Court of Appeals for the Ninth Circuit, in the cause entitled as above and numbered 1453; and the condition of this obligation is, that if the appellants shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their said appeal good, then this obligation shall be void—otherwise to remain in full force.

Dated August 4th 1909.

NATIONAL SURETY COMPANY,

By FRANK L. GILBERT,

[SEAL.]

Resident Vice President and General Manager.

C. E. OBERG,

Resident Assistant Secretary.

The foregoing bond is approved, on August 6, 1909.

JOSEPH McKENNA,

*Associate Justice of the Supreme Court
of the United States.*

(Endorsed:) Bond on Appeal. Filed Aug. 6, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

Stipulation.

Supreme Court of the United States.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al., Appellants,
vs.

THE UNITED STATES OF AMERICA, Appellee.

THE UNITED STATES OF AMERICA, Appellant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al., Appellees.

(Stipulation Relative to Cost of Printing Record.)

It is stipulated that the cost of printing the record on appeal in the cause above-entitled from the Circuit Court of Appeals for the Ninth Circuit, to the Supreme Court of the United States, needed in addition to the record heretofore printed on appeal in said cause to the Circuit Court of Appeals for the Ninth Circuit, shall be borne by appellant Southern Pacific Railroad Company, the United States of America agreeing to furnish without cost the printed record of appeal to the Circuit Court of Appeals for the Ninth Circuit.

P. F. DUNNE,

WM. SINGER, JR.,

Attorneys for S. P. R. R. Co. et al.

ROBT T. DEVLIN,

Attorney for United States.

(Endorsed:) Stipulation Relative to Cost of Printing Record. Filed Aug. 4, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

Stipulation.

Supreme Court of the United States.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al., Appellants,
vs.

THE UNITED STATES OF AMERICA, Appellee.

THE UNITED STATES OF AMERICA, Appellant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al., Appellees.

(Stipulation Relative to Record on Appeal.)

All the parties hereto intending to take an appeal from the decree made and entered on February 1st, 1909, by the United States

Circuit Court of Appeals for the Ninth Circuit, in the cause styled as above and numbered 1453, affirming the decree of the United States Circuit Court, Southern Division, Southern District of California, Ninth Circuit.

It is hereby stipulated and agreed that the transcript of record to be filed by the United States as appellant on its appeal herein to the Supreme Court of the United States, may be used by the Southern Pacific Railroad Company, D. O. Mills, and Homer S. King, as Trustees, and Central Trust Company of New York, as trustee, on the hearing of the appeal to be taken by them the same as if such transcript were filed by them; and such transcript may be used on the hearing of both appeals alike.

P. F. DUNNE,
WM. SINGER, JR.,
Attorneys for S. P. R. R. Co. et al.
ROBT T. DEVLIN,
Attorney for United States.

(Endorsed:) Stipulation Relative to Record on Appeal. Filed Aug. 4, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1453.

THE UNITED STATES OF AMERICA, Appellant and Cross-Appellee,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al., Appellees and
Cross-Appellants.

Præcipe for Record on Appeal.

To the Clerk of said Court.

SIR: Please make a single certified copy of the Transcript of Record, including therein the appeal papers of both parties thereto, upon the appeals of the respective parties in the above-entitled cause to the Supreme Court of the United States.

ROBT T. DEVLIN, *U. S. Att'y.*
By GEO. CLARK, *Ass't U. S. Att'y.*
P. F. DUNNE,
WM. SINGER, JR.,
Att'ys for S. P. R. R. Co. et al.

(Endorsed:) Præcipe for Record on Appeal. Filed Aug. 6, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1453.

THE UNITED STATES OF AMERICA, Appellant and Cross-Appellee,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al., Appellees and
Cross-Appellants.

*Certificate of Clerk U. S. Circuit Court of Appeals to Proceedings
and Transcript of Record on Appeals to the Supreme Court of the
United States.*

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing thirty-two (32) pages, numbered from one (1) to thirty-two (32) both inclusive, to be a true copy of the Assignment of Errors of the United States of America of the Assignment of Errors of the Southern Pacific Railroad Company et al. and of all proceedings had in the above-entitled case in the said the United States Circuit Court of Appeals for the Ninth Circuit, including the opinion filed therein as the same remain on file and of record in my office and that the same in connection with the preceding certified copy of the printed Transcript of Record on Appeal, and the printed Transcript of Record on Cross-Appeal, constitute a true copy of the complete record in the above-entitled case and, together with the accompanying original Complainant's Exhibit "F," constitute the Transcript of Record in the case upon the appeal therein taken by each party to the Supreme Court of the United States.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this eighteenth day of August, A. D. 1909.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

UNITED STATES OF AMERICA, ss:

The President of the United States to The Southern Pacific Railroad, Company, D. O. Mills, and Homer S. King, Trustees, and The Central Trust Company of New York, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, to be held at the City of Washington, in the District of Columbia, within sixty days from the date of the citation, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, from a decree signed, filed and entered therein on February 1st 1909, in that certain suit numbered 1453, wherein the United States of America is appellant, and you are appellee, to show

cause, if any there be, why the decree rendered against the said appellant as in said petition and order allowing said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Associate Justice of the Supreme Court of the United States, this 6th day of August A. D. 1909.

JOSEPH McKENNA,
*Associate Justice of the Supreme Court
of the United States.*

[Endorsed:] Docketed. No. 1453. In the — Court of the United States for the — of —. The United States of America vs. The Southern Pacific Co. et al. Citation. Filed Aug. 6, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit. Rob't T. Devlin, U. S. Attorney.

Due service admitted this 6th day of August, 1909.

P. F. DUNNE,
WM. SINGER, JR.,
Attorneys for Respondents.

UNITED STATES OF AMERICA, ss:

The President of the United States to United States of America,
Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, to be held at the City of Washington, in the District of Columbia, within sixty days from the date of this citation, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, from a decree signed, filed and entered therein on February 1st 1909, in that certain suit numbered 1453, wherein Southern Pacific Railroad Company, D. O. Mills and Homer S. King as trustees, and Central Trust Company of New York as trustee, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in said petition and order allowing said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Associate Justice of the Supreme Court of the United States, this 4th day of August, A. D. 1909.

JOSEPH McKENNA,
*Associate Justice of the Supreme Court
of the United States.*

[Endorsed:] 1453. Docketed. Supreme Court of the United States. Southern Pacific Railroad Co. et al., Appellants, vs. United States of America, Appellee. Citation. Filed Aug. 4, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit. P. F. Dunne and Wm. Singer, Jr., Attorneys for Appellants, Flood Building, San Francisco.

Service, by copy, of within citation, is hereby admitted on August 4th, 1909.

ROBT T. DEVLIN,

United States Attorney, Attorney for Appellee.

Endorsed on cover: File No. 21,818. U. S. circuit court appeals, 9th circuit. Term No. 592. The United States, appellant, vs. The Southern Pacific Railroad Company, D. O. Mills, and Homer S. King, trustees, and Central Trust Company of New York, trustee. File No. 21,819. Term No. 593. The Southern Pacific Railroad Company, D. O. Mills, and Homer S. King, trustees, and Central Trust Company of New York, trustee, appellants, vs. The United States. Filed September 11th, 1909. File Nos. 21,818 and 21,819.

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

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| THE UNITED STATES, APPELLANT, | } | No. 128. |
| <i>v.</i> | | |
| THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills and Homer S. King, trustees, and Central Trust Company of New York, trustee. | | |

| | | |
|---|---|----------|
| THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills and Homer S. King, trustees, and Central Trust Company of New York, trustee, appellants, | } | No. 129. |
| <i>v.</i> | | |
| THE UNITED STATES. | | |

*APPEALS FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT.*

STATEMENT, BRIEF, AND ARGUMENT FOR THE UNITED STATES.

The situation presented by this record resembles that in No. 121. Here, however, different grants are found in conflict.

The bill is to quiet title to lands in California. It also asks an accounting for moneys received from

sales by the railroad company of any of the lands if it should appear that the sales were made to *bona fide* purchasers. It was brought by the United States against the Southern Pacific Railroad Company, D. O. Mills and Homer S. King, trustees, and the Central Trust Company of New York, trustee. The interest of these trustees arises by reason of mortgages executed to them by the railroad company to secure bond issues. They, however, urge no defense different from that asserted by the company.

There was a joint and several answer (R., 54) and replication (R., 82). The proofs taken before a special examiner consisted of testimony of the register of the Los Angeles land office (R., 124), stipulations (R., 419, 444), and parts of the records in three former causes between the United States and the Southern Pacific, which were received as complainant's Exhibits C, D, and E (R., 141, 224, 350). These are the cases reported on appeal in 146 U. S. 570; 168 U. S. 1; and 183 U. S. 519, respectively. There is also a diagram showing the lines of location of the various railroads concerned and the limits of the corresponding grants (R., 477). The case was submitted to the Circuit Court on July 10, 1905. The final decree, entered March 18, 1907, was for the Government with respect to certain of the lands on the ground that the title had been rendered *res judicata* by the decree in 168 U. S. 1 (R., 116, 120). As to the remainder and greater part of the lands in suit judgment was for the defendants. On appeal by both sides the Circuit Court of Appeals for the Ninth

Circuit affirmed the decree. (R., 492). Both have again appealed to this court, each from that part of the decree adverse to it.

The principal controversy here grows out of the fact that the limits of what is known as the main line grant to the Southern Pacific Railroad Company overlap those of the grant to the Atlantic & Pacific Railroad Company. Another question in the case bearing on only part of the lands brings in a third grant—the branch line grant to the Southern Pacific which happens to overlap both the others at this place.

The Atlantic & Pacific grant

was made by the act of July 27, 1866, c. 278, 14 Stat. 292, which statute also created the corporation and empowered it to build a line from Springfield, Missouri, to the Pacific Ocean. The grant lies in section 3, which is set out hereafter as Appendix A. There is first a primary grant, within prescribed limits, of alternate odd-numbered sections of land, not mineral, and not otherwise appropriated at the time of the filing of the map of location of the railroad. It is *in presenti*: “that there be and hereby is granted.” Then there is an indemnity grant, within other limits, of lands to be selected by the company to make up for deficiencies in the primary grant. Section 6, which is here made Appendix B, directs a survey of the lands after the fixing of the general route, and declares that the odd sections granted shall not be liable to entry except by the

railroad company. The conditions of the grant pertinent here are in sections 8 and 9, hereafter printed as Appendix C.

During the year 1872 the Atlantic & Pacific filed in the Interior Department maps designating the line of the road it proposed to build (R., 73). These were accepted as maps of definite location and must be taken here as such (168 U. S. 1). Accordingly, the Secretary of the Interior made formal withdrawal of the appropriate lands from other entry or disposition. The rights of the company—whatever they were, and being of course always contingent for their perfection upon their being earned by construction of the road—were declared to attach as of the dates of filing of the maps (R., 74).

The Atlantic & Pacific failed to construct its road in California and for this breach of condition all the lands within both the granted and indemnity limits granted to it by the act of 1866 and subsequent acts were "declared forfeited and restored to the public domain"—this by the act of July 6, 1886, c. 637, 24 Stat. 123, which is here set out as Appendix D.

The Southern Pacific main line grant

was made by the same act of July 27, 1866. It occurs in section 18, and was made to support the construction of a line—known as the main line—by the Southern Pacific from San Francisco to connect with the Atlantic & Pacific at the California boundary. Section 18 is printed here as Appendix E. The grant is

simply "similar" to and "subject to all the conditions and limitations" of the Atlantic & Pacific grant of section 3.

The Southern Pacific accepted this, and its maps of definite location of the various sections of the line were filed and approved at times from 1878 to 1884. (R., 58.) Certain doubts of the authority of the company and the validity of this route are not now material, as they were cured by State and congressional legislation. (R., 425-432; and see 183 U. S. 425.) The grant was ultimately earned by the construction of the main line. (R., 432-435.)

The Southern Pacific branch line grant

is section 23 of the act of March 23, 1871, c. 122, 16 Stat. 573. As no question concerning it arises, no detailed description of it is needed.

The overlapping limits

principally involved are the main line indemnity limits and the Atlantic & Pacific primary limits. They inclose a large common area, and within this the Southern Pacific has made many selections of lands as falling under the indemnity provisions of its main line grant, some of which have gone through to patent while others are still pending. The patented lands, described in Exhibit A (R., 25) to the bill, were selected November 10, 1903, and the patents were issued June 30, 1903 (so the stipulation reads, R.,

441). Some of these have been sold to *bona fide* purchasers (R., 441). The pending selections were made at various times from September 6, 1898 to July 2, 1903. These are the patents and selections attacked by the bill.

It will appear later under No. 129 that as to part of the lands former selections and a former adjudication must be considered; but it is proposed to consider first the question presented by the facts so far stated, that is, the question in No. 128. The situation may be summarized from the above as follows:

All the lands involved are within the primary limits of the forfeited Atlantic & Pacific grant made by the act of July 27, 1866. (R., 440.)

All are within the indemnity limits of the Southern Pacific main line grant made by the same act. (R., 441.)

The Atlantic & Pacific map of definite location was filed and accepted before that of the Southern Pacific main line.

The Southern Pacific main line map was filed and the withdrawals were made before and the indemnity selections under it were made long after, the forfeiture of the Atlantic & Pacific grant and its restoration to the public domain.

The lands described in Exhibit A to the bill have already been patented to the Southern Pacific; as to those in Exhibit B selections are still pending in the Department of the Interior.

The Southern Pacific has sold some of the patented lands to *bona fide* purchasers. (R., 441.)

In short

The question in No. 128

is: (1) *Is the Southern Pacific now entitled under the indemnity provisions of its main line grant made by the act of July 27, 1866, section 18, to select lands which by the same act were subject to the primary provisions of the Atlantic & Pacific grant and which had been definitely located under that grant by the filing of the map, but which subsequently by the act of July 6, 1886, were forfeited for breach of condition by the Atlantic & Pacific and restored to the public domain?*

This is the main question, but several others are presented and will be stated as propositions:

(2) Although selections are still pending in the Interior Department of the lands included in Exhibit B annexed to the bill, yet the department has no power, jurisdiction, or discretion to approve them, and this bill to quiet title and remove the cloud will therefore lie.

(3) The Government is entitled to a decree for the purchase price up to \$1.25 per acre of such of the lands as have been sold to *bona fide* purchasers.

The Circuit Court answered the main question in the affirmative on the authority of *Southern Pacific v. United States*, 183 U. S. 519. (R., 111.) The Circuit Court of Appeals affirmed this decision, but on

a different ground. Its opinion lays down that the right of a railroad company to select indemnity lands depends upon the status of the lands at the date of selection and not upon their status at the date of the act making the grant; that the lands in suit were at the time of selection unappropriated public lands; and that hence they were legally selected. Reliance is placed on *Ryan v. Railroad Co.*, 99 U. S. 382. (R., 490.) This decision rendered it unnecessary to consider the other propositions stated above.

ARGUMENT, NO. 128.

I.

The Southern Pacific is not entitled to select as being within the indemnity provisions of its main line grant (made by the act of July 27, 1866) any lands which were subject to the primary provisions of the Atlantic & Pacific grant (made by the same act).

(1) This question is really *res judicata*. In a case between the same parties this court said (168 U. S. 1, 61-62):

We are of opinion that it must be taken * * * to have been conclusively adjudicated in the former cases [*i. e.*, 146 U. S. 570 and 146 U. S. 615] as between the United States and the Southern Pacific Railroad Company. * * *

3. That in view of the conditions attached to the grant, and of the reservations of power in Congress contained in the act of 1866, such lands became, upon the passage of the forfeiture act of 1886, the property of the United

States, and by force of that act were restored to the public domain, without the Southern Pacific Railroad Company having acquired any interest therein that affected the power of the United States to forfeit and restore them to the public domain.

(2) But other cases clearly sustain the principle underlying this decision:

Bardon v. Northern Pacific R. R. Co., 145 U. S. 535, 545.

Sioux City & St. P. R. R. Co. v. United States, 159 U. S. 349, 364-365.

Chicago, etc., Ry. Co. v. United States, 159 U. S. 372, 374-376.

St. Paul R. R. v. Winona R. R., 112 U. S. 720, 732.

Clark v. Herington, 186 U. S. 206.

As a preliminary matter it is to be borne in mind that acts of Congress of this character are not only grants but are statutes subject to rules of statutory construction. They must receive such construction as will carry out the intent of Congress, however difficult it might be to give full effect to the language used if the grants were by instrument of private conveyance. And, further, if rights claimed under the Government are set up against it, they must be so clearly defined that there can be no question of the purpose of Congress to confer them. See *Leavenworth, etc., Railroad v. United States*, 92 U. S. 733, 740; *Winona & St. Peter R. R. v. Barney*, 113 U. S. 618, 625; *Sioux City, etc., R. R. v. United States*, 159 U. S. 349, 360.

The grants in question—the Southern Pacific main line and the Atlantic & Pacific—were contemporaneous, both being made by the act of 1866. The map of definite location of the Atlantic & Pacific was filed and accepted. Its primary lands were therefore definitely fixed by numbers which can be ascertained. This statement would seem to be enough to show that the same lands were not granted or intended to be granted to the Southern Pacific. It is contended, however, that as the Atlantic & Pacific lands were subsequently forfeited and restored to the public domain, and as the selections were not made until after the forfeiture, the selections are valid, since the title to indemnity lands does not pass until the selections are actually made. This is not tenable.

The question is one of legislative intent. That is, What did Congress intend to give the Southern Pacific? Looking at section 18 of the act of 1866, and by reference therefrom at section 3 as well, it is seen that so far as this case is concerned the utmost lands—*i. e.*, indemnity lands—included in the main line grant were fixed at least as soon as the map of definite location was accepted. They were the odd-numbered sections lying between the parallel lines 20 and 30 miles from the road; *i. e.*, within the indemnity limits. They were not all such odd-numbered sections. Some, of course, were already reserved for other purposes, and even of the remainder the Southern Pacific was entitled only to enough to supply the deficiencies in its primary grant. But the point here is that at least all the sections among

which the Southern Pacific could choose were determined and that such sections did not include lands formerly granted or devoted to other objects. At the same time with this grant the Atlantic & Pacific primary grant came into operation and became effective. And it became defined also on the acceptance of the map of definite location. The lands within it were thus reserved for the purposes of that road, and by the same token were not sections from among which the Southern Pacific was authorized to select.

In other words, on July 5, 1886—the day before the Atlantic & Pacific forfeiture—the Southern Pacific certainly could not have made selections within these primary limits. *St. Paul R. R. v. Winona R. R.*, 112 U. S. 720; *Sioux City R. R. v. Chicago R. R.*, 117 U. S. 406. If it could not select then, it can not now, unless Congress has granted that privilege. *Chicago, etc., Ry. v. United States*, 159 U. S. 372, 375; *Sioux City, etc., R. R. v. United States*, 159 U. S. 349, 366. Nowhere has Congress made such a grant in words, and considering the question as one of intent—that is, the intent of the act of 1866 and of the act of 1886—the intent is all against it.

The railways indeed, under the act of 1866, might find themselves eventually with a shortage by reason of prior appropriation of the lands—there was no guaranty of any amount, or that they should find unoccupied 20 sections per mile—but there is no sign that it was intended to give a chance later to get more land than appeared to have been granted at the time.

What appeared at the time was definitely known. It was the unreserved odd-numbered sections. These Congress in effect held out to the Southern Pacific a chance of getting—some of them, or possibly even all. This it was willing to do for the sake of having the road built. But that was intended to be all that was granted. The company was not to be allowed to go outside of these specifications in the event of failure to be satisfied inside. In other words, Congress determined as accurately as was possible at the time just what lands might be subject to each company's grant, and just what the maximum toll was that the public domain might have to bear. No expectation was held out to either company that it might profit by the chance that some of the reserved numbers within those limits which it could not then get might subsequently fall into the public domain. Now among such reserved numbers were those which were within the primary limits of the Atlantic & Pacific grant. Clearly, they were not intended to be subject to the Southern Pacific grant. Certainly they were not subject to that grant before the forfeiture. Nor can any intent be worked out that they were subject to it after the forfeiture, for, as a matter of the good faith that must be imputed to Congress, it is to be presumed that Congress never contemplated such a forfeiture. Congress, of course, expected the Atlantic & Pacific to be built and made the grant to it on that basis just as it made grants to the Southern Pacific on a similar basis. *Cf.* 146 U. S. 604.

Nor can any grant or intent to make a grant to the Southern Pacific be gathered from the act of July 6, 1886. Quite to the contrary. By that act the Atlantic & Pacific lands were "declared forfeited and restored to the public domain." There are certainly no express words of grant to the Southern Pacific here. The suggestion, however, is that, taken in connection with the original grant of the privilege to select from the public lands, this restoration was intended for the benefit of the Southern Pacific as well as of all others who are entitled under the land laws to enter on public lands. But, as has already been pointed out, the original grants were intended to fix as definitely as possible the sections which could be selected, and such sections did not then include the lands now released by the act of 1886, for these lands were then reserved—reserved, that is, to the Atlantic & Pacific.

And a railroad company acquiring lands from the public domain stands on an entirely different basis from that on which the settler entering under homestead laws stands. The latter acquires title by complying with certain conditions laid down by general laws for the benefit of all who can comply with them; the former takes by reason of a special grant and must show clearly and beyond question that the land which it claims was within the terms of that grant. Now the restoration of these lands to the public domain was certainly intended to subject them to the operation of the general land laws, but this is all that was intended. There is no sign of

intention to subject them to the Southern Pacific grant of 1866. See *Clark v. Herington*, 186 U. S. 206, 209-210. The forfeiture provision in the Atlantic & Pacific grant (sec. 8, act of July 27, 1866) was a condition subsequent which could be enforced only by the United States. *Lake Superior, etc., Co. v. Cunningham*, 155 U. S. 354. Thus the United States could have allowed the grant to remain to this day. Certainly in that case the Southern Pacific could not have made the selections. To say that it can now is to say that the act of forfeiture amounted to an enlargement of its grant. But much clearer words than we find are necessary to justify such a construction.

What was really intended by this restoration to the public domain made by the act of 1886 was to reserve the lands for the United States, that is, for the general purposes of the land laws. Such a formal restoration was necessary because section 6 of the act of 1866 had declared that "the odd sections of land hereby granted shall not be liable to sale, or entry, or preemption, before or after they are surveyed, except by said company [*i. e.*, the Atlantic & Pacific], as provided in this act" (14 Stat. 296). If it required an express declaration to subject the forfeited lands to the general land laws, surely an equally plain declaration is necessary to subject them to this special railroad grant. To give to the act of 1886 the double effect of devoting the lands to the general homestead laws and also to the special Southern Pacific act is warranted neither by its own language nor by that of

the prior legislation. This has really been determined by the cases of *Southern Pacific Railroad v. United States* reported in 146 U. S. 570, 615, and 168 U. S. 1.

This reservation to the United States was just as effective and made the lands included within it subject to the same exemptions as did the reservation of the even-numbered sections in the granting act of 1866. The lands so reserved could not therefore be selected by the railroad. *United States v. Missouri, etc., Railway Co.*, 141 U. S. 358, 368.

Thus both words and intent of both acts—1866 and 1886—combine to deny the right of selection asserted.

A claim entirely analogous to the one now made was advanced by the Southern Pacific in *Southern Pacific Railroad Co. v. United States*, 189 U. S. 447. There the conflict was between the limits of the branch line grant made by section 27 of the act of March 3, 1871, 16 Stat. 573, and the grant made by the same act to the Texas Pacific Railroad. The Southern Pacific contended that it was entitled to select, as being within the indemnity limits of its branch line grant, lands which had also been subject to the primary limits of the Texas Pacific grant, but which later had been declared forfeited to the United States for breach of condition. This claim was denied for the reasons which appear in the following extract from the opinion (pp. 451, 452):

The Texas Pacific grant was declared forfeited by the act of February 28, 1885, c. 265, 23 Stat., 337, and this forfeiture enured to the

benefit of the United States. *United States v. Southern Pacific Railroad*, 146 U. S., 570. It is argued further, however, that if the Southern Pacific did not get the lands in question under its primary grant, it may take a part of them as indemnity lands. It is said that the company has a right to take them for that purpose if the status of the lands at the time of selection permits it. *Ryan v. Railroad Co.*, 99 U. S., 382. That contention seems to be disposed of by *Southern Pacific Railroad v. United States*, 168 U. S., 1, 47, 66, and the practice of the Land Department for many years has been inconsistent with it. *Southern Pacific Railroad v. Moore*, 11 L. D., 534; *Moore v. Kellogg*, 17 L. D., 391; *Smead v. Southern Pacific Railroad*, 29 L. D., 135. When it is decided that the company got no title to the land within its twenty-mile limit, it would be contrary to the intimations of the cases to allow it to take the adjoining strip outside under a claim of indemnity. See *Bardon v. Northern Pacific Railroad*, 145 U. S., 535, 545; *Clark v. Herington*, 186 U. S., 206. It is not clear that the language of the statute does not forbid it. The indemnity to the Atlantic & Pacific, by section 3 of its charter adopted for the Southern Pacific by section 18, is to be other lands "in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers." It might be argued that the last quoted words dispose of the matter.

And in *Chicago Railroad v. United States*, 159 U. S. 372, and *Sioux City Railroad v. United States*, 159 U. S. 349, it was held that where two roads took under a grant of the same date neither road could take as indemnity lands within the primary limits of the other road, although the grant to the Sioux City, or a large part of it, had been forfeited for nonconstruction of the road. The Chicago company attempted to select the forfeited lands as indemnity. This claim was denied, and it was pointed out that neither road could use as a base for an indemnity selection lands which fall within the primary limits of the other road, although also falling within its own primary limits. Manifestly this is in point here.

The case of *Ryan v. Railroad Co.*, 99 U. S. 382, and the line of cases following it, appear to be still insisted upon by the defendant. The other cases referred to are: *Barney v. Winona*, 117 U. S. 228; *Wis. Central v. Price County*, 133 U. S. 496; *United States v. Missouri, etc., Ry.*, 141 U. S. 358; *Hewitt v. Schultz*, 180 U. S. 139; *So. P. R. R. Co. v. Bell*, 183 U. S. 675.

So far as the latter cases and the *Ryan* case in one aspect of it are concerned, the principle for which they stand is that the title to lands within the indemnity limits of a railroad grant does not attach until the selection is actually made by the company in the manner prescribed. But all that has been said herein is entirely consistent with this. It is readily agreed that the title of the Southern Pacific

to indemnity lands would not in any event accrue until the selection was made by the company and accepted and approved by the Secretary of the Interior. But to say that is not at all to say or to determine what lands may be selected. And it is the latter question with which we are here concerned. And so far as the *Ryan* case bears on this question there is a feature of it that not only distinguishes it from the present case but also serves to emphasize the very reason why the lands here are not subject to selection by the Southern Pacific. There the lands were selected by the Central Pacific Railroad Company as being within the indemnity limits of a grant made to it by the act of July 25, 1866, 14 Stat. 239. At the time of the act they were within the boundaries of a certain Mexican claim known as the Manual Diaz grant. But later, and before the actual selection was made, this claim was finally rejected as invalid. It was held that the company was entitled to select the lands. The point of distinction is this: In that case at the time of the act, and at all times, the United States was contesting the Mexican grants; that is to say, it was contending that the lands were a part of the public domain. So that the contest and the final result of it were for the benefit not only of the Government but also of any persons to whom grants had been made covering lands within the contested boundaries. Here, however, at the time of the granting act to the Southern Pacific, and, indeed, by its very terms, the

lands were already devoted to a purpose that entirely excluded the Southern Pacific's participation in them, and so far from effecting any departure from this attitude subsequent legislation has but confirmed it. In other words, no sort of estoppel by deed can subject to a grant lands which at the time of the grant were not merely not within the category to which the grantor treated his grant as applying but were expressly, and by another part of the very same instrument, declared to be within another and entirely distinct category.

The indemnity to the Southern Pacific is to be other lands "in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, *and not including the reserved numbers.*" Mr. Justice Holmes, in the exactly analogous situation, considered in 189 U. S. 452, suggests that the last quoted words dispose of the matter. The suggestion seems not to have been considered elsewhere, but beyond question the words can perfectly naturally be given such an effect and equally clearly they accord perfectly with the general intent of the act. This clause, therefore, in terms prohibits the Southern Pacific from selecting lands reserved for the Atlantic & Pacific.

II.

Selections for the lands in Exhibit B to the bill are now pending in the Interior Department, but the Land Department has no power, jurisdiction, or discretion which it can exercise in approving them, and therefore this suit to quiet title and remove the cloud will lie.

Precisely the same sort of thing was done in *Southern Pacific v. United States*, 168 U. S. 1, for it was said that the lands in suit, claimed by the Southern Pacific, aggregated about 700,000 acres "for 72,000 acres of which the company has made application for patents." That status of the matter did not prevent the court from entering decree in favor of the United States for the lands; for, since the Southern Pacific could not take them at all or in any circumstances, the Land Department had no jurisdiction or discretion in the matter. In such circumstances the court will determine the rights of the parties and not allow its jurisdiction to be suspended by the pendency of an unauthorized application or proceeding in the Land Office (although where the land officers have still to exercise a proper discretion the courts will not interfere).

Cf. Mullan v. United States, 118 U. S. 271, 278-279.

Burfenning v. Chicago, etc., Ry., 163 U. S. 321, 323.

Doolan v. Carr, 125 U. S. 618, 624-625.

Weeks v. Bridgman, 159 U. S. 541, 547.

III.

The Government is entitled to a decree for the price (at the rate of \$1.25 per acre) of such of the patented lands as have been sold to bona fide purchasers.

The verified answer (R., 64, 77-80) and the stipulation of the parties (R., 441) show what lands have been sold or contracted to be sold and that the purchases were made in good faith within the meaning of the act of March 2, 1896, 29 Stat. 42, and at a rate greater than \$1.25 per acre. As to such as have been patented and sold the complainant is entitled to a decree for the purchase price up to \$1.25 per acre.

Southern Pacific Railroad Company v. United States, 200 U. S. 341.

Nor can this claim be met with the contention that there is a shortage in the land grant made to the railroad. No such shortage may be shown before a final adjustment of the grant.

Oregon Railroad Company v. United States, 189 U. S. 103, 115.

Of course the complete answer to the contention lies in the first part of the discussion herein that the lands were set apart for the Atlantic & Pacific and simply are not within the terms of the Southern Pacific grant.

Further, it appears by stipulation that within the indemnity limits there still remains a large body of lands from which the company can select in lieu of those here involved. (R., 442-443, 445.)

Cf. *Southern Pacific v. United States* (No. 1), 200 U. S. 341, 353; (No. 2), *id.* 354, 360.

Case No. 129.

FURTHER STATEMENT.

As intimated, part of the lands in suit were involved in a former selection under another grant and in a former adjudication between the same parties. They comprise about half the lands described in Exhibit B. They are separately described in Subdivision V of the decree. (R., 96.) As well as being within the area common to the Atlantic and Pacific primary limits and the Southern Pacific main line limits (and therefore subject to the discussion in No. 128), they are within the indemnity limits of the branch line grant to the Southern Pacific made by section 23 of the act of March 3, 1871, c. 122 (16 Stat. 579). Under the latter grant the lands had been selected. The United States had contested that selection. The courts finally denied the claim of the company, and the title of the United States was quieted. (168 U. S. 1.) The Southern Pacific there failed to claim any right to select the lands as being within its main line grant. The record in that case is in evidence here. (R., 224.)

By the final decree there it was adjudged "that the United States of America is the owner, by title in fee simple absolute," of the sections described; the defendants were forever enjoined from asserting any title to the lands; and it was further decreed that every patent issued to the Southern Pacific in pursuance of the act of July 27, 1866, and the act of March 3, 1871, purporting to convey to the company

any of the lands described, was null and void. (R., 307.) The mandate of this court filed January 7, 1898, affirmed the decree in all respects (R., 310).

That case was decided in 1897. Because of it, in 1898 the Land Office made an order the effect of which was to cancel many selections made by the Southern Pacific, to restore the large amount of lands within the overlapping limits to the public domain, and to render them subject to entry on September 6, 1898 (R., 128-133).

On the hour that these lands were restored five or six hundred persons, under the impression that it had been finally decided that the Southern Pacific had no rights in the lands, stood in line at the Los Angeles land office waiting to file their entries under the settlement laws. But at the head of the line was a land agent of the Southern Pacific. He presented a large number of selection lists covering these lands. They were filed as under the indemnity provisions of the main line grant. Their practical effect has been to hold the lands in reserve all the years since and to constitute a cloud on the title. (R., 133-136.)

In other words,

The question in No. 129

is: *Is the Southern Pacific now entitled under the indemnity provisions of its main line grant made by the act of July 27, 1866, to select lands which had formerly been selected by it under its branch line grant made by the act of March 3, 1871, and which thereafter were embraced in the decree against it in Southern Pacific v. United States (168 U. S. 1)?*

Both the Circuit Court and the Circuit Court of Appeals answered this in the negative. Subdivision V of the decree cancelled the selections and enjoined the defendants from asserting any title to the lands adverse to the United States (R. 98).

ARGUMENT.

The former case is a conclusive adjudication against the defendants as to lands there and here involved.

Although, as pointed out in *Southern Pacific v. United States* (183 U. S. 519), the court did not in the case in 168 U. S. 1, consider any claim of the company under the act of 1866, and the Southern Pacific did not there assert any, yet, as was also pointed out in 183 U. S. 533, "the decrees that were rendered in those cases [meaning the cases in 146 U. S. 570, 615, and 168 U. S. 1] are conclusive of the title to the property involved in them, *no matter what claims or rights either party may have had and failed to produce.*" And the mandate in the 183 U. S. case

made special provision preserving the former decrees (183 U. S. 535).

Cf. *United States v. Southern Pacific* (184 U. S. 49).

Clearly, then, the title to such of the lands in Exhibit B of the bill as were included in the former case is *res judicata*. It is immaterial that the right now asserted was not asserted then. The bill was to quiet title and the right now relied on should have been put forward at the time, as it could have been. The object of the rule is to end litigation.

(See *United States v. California, etc., Land Company*, 192 U. S. 355; *Bienville Water Supply Co. v. Mobile*, 186 U. S. 212, 216-217; *Dowell v. Applegate*, 152 U. S. 327, 341-346.)

The defendant company contends that this effect of the decision is avoided for the reason that by the subsequent selection under the act of 1866 (which was not in question in the case) it acquired a new title. This is thoroughly unsound. Selection may be necessary to perfect title, but the right, of course, always comes from the granting act. That right could have been urged then as well as now.

It is respectfully submitted that in both appeals the decree should be for the United States, as prayed in the bill of complaint.

F. W. LEHMANN,
Solicitor General.

JANUARY, 1912.

APPENDIX A.

[Section 3, act of July 27, 1866, 14 Stat. 294.]

That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of mails, troops, munitions of war, and public stores, over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption or other claims or rights at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preempted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved num-

bers: *Provided*, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: *Provided further*, That the railroad company receiving the previous grant of land may assign their interest to said "Atlantic and Pacific Railroad Company," or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: *Provided further*, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as provided above: *And provided further*, That the word "mineral" when it occurs in this act, shall not be held to include iron or coal: *And provided further*, That no money shall be drawn from the Treasury of the United States to aid in the construction of the said "Atlantic and Pacific Railroad."

APPENDIX B.

[Section 6, act of July 27, 1866, 14 Stat. 296.]

That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry, or preemption, before or after they are surveyed, except by said company, as provided in this act, but the provisions of the act of September, eighteen hundred and forty-one, granting preemption rights, and the acts amendatory thereof, and of the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May twenty, eighteen hundred and sixty-two, shall be, and the same are hereby, extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company.

APPENDIX C.

[Sections 8 and 9, act of July 27, 1866, 14 Stat. 297.]

(SEC. 8) That each and every grant, right, and privilege herein are so made and given to and accepted by said Atlantic and Pacific Railroad Company, upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish, and complete the main line of the whole road by the fourth day of July, anno Domini eighteen hundred and seventy-eight.

(SEC. 9) That the United States make the several conditional grants herein, and that the said Atlantic and Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time hereafter, the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road.

APPENDIX D.

[Act of July 6, 1886, c. 637, 24 Stat. 123.]

That all the lands, excepting the right of way and the right, power, and authority given to said corporation to take from the public lands adjacent to the line of said road material of earth, stone, timber, and so forth, for the construction thereof, including all necessary grounds for station buildings, workshops, depots, machine shops, switches, sidetracks, turntables, and water stations, heretofore granted to the Atlantic & Pacific Railroad Company by an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," approved July twenty-seventh, eighteen hundred and sixty-six, and subsequent acts and joint resolutions of Congress, which are adjacent to and coterminous with the uncompleted portions of the main line of said road, embraced within both the granted and indemnity limits, as contemplated to be constructed under and by the provisions of the said act of July twenty-seventh, eighteen hundred and sixty-six, and acts and joint resolutions subsequent thereto and relating to the construction of said road and telegraph be, and the same are hereby, declared forfeited and restored to the public domain.

APPENDIX E.

[Section 18, act of July 27, 1866, 14 Stat. 299.]

That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for.

(31)





16
JAN 16 1912

JAMES H. MCKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1911.

Nos. 128, 129.

THE UNITED STATES,
Appellant,
vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY,
D. O. MILLS and HOMER S. KING, Trustees,
and CENTRAL TRUST COMPANY OF NEW
YORK, Trustee.

THE SOUTHERN PACIFIC RAILROAD COMPANY,
D. O. MILLS and HOMER S. KING, Trustees,
and CENTRAL TRUST COMPANY OF NEW
YORK, Trustee,
Appellants,
vs.

THE UNITED STATES.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

BRIEF FOR THE SOUTHERN PACIFIC RAILROAD COMPANY.

MAXWELL EVARTS,
Of Counsel for Southern Pacific Railroad Company.



Supreme Court of the United States,

OCTOBER TERM, 1911.

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THE SOUTHERN PACIFIC RAIL-
ROAD COMPANY, D. O. MILLS
and HOMER S. KING, Trus-
tees, and CENTRAL TRUST
COMPANY OF NEW YORK,
Trustee.

THE SOUTHERN PACIFIC RAIL-
ROAD COMPANY, D. O. MILLS
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THE UNITED STATES.

APPEALS FROM THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE SOUTHERN PACIFIC RAILROAD COMPANY.

Statement.

The Atlantic and Pacific Railroad Company received a grant of lands under section 3 of the act of Congress of July 27, 1866 (14 U. S. Stats., 292), to aid in the construction of a railroad from Springfield, Missouri, to the Pacific Ocean. No part of this road was constructed in the State of California, and on July 6, 1886, an act of Congress was passed (24 U. S. Stats., 123), forfeiting and restoring to the public domain all lands granted to that company in the State of California.

A contemporaneous grant of land was made by section 18 of the same act of Congress (14 U. S. Stats., 292) to the Southern Pacific Railroad Company to aid in the construction of a railroad from The Needles to Mojave, which grant was earned by the construction of the railroad. This grant is known as the Southern Pacific *Main Line* Grant.

The lands involved on this appeal are common to the primary limits of the Atlantic and Pacific grants and the indemnity limits of the Southern Pacific *Main Line* Grant and were se-

lected by the Southern Pacific Railroad Company as *Main Line* indemnity lands after they had been restored to the public domain by the forfeiture act above referred to and after final decree in the case of *Southern Pacific Railroad Co. vs. United States* (168 U. S., 1). For a portion of the lands so selected by the railroad company patents were issued by the United States in 1903.

A portion of the lands in suit were involved in their character as Branch Line Grant lands in the case of *Southern Pacific Railroad Company vs. United States* (168 U. S., 1), and while physically embraced within the Main Line Grant, yet in their character of Main Line Grant lands they were not involved in said case which was brought with reference only to the Branch Line Grant of March 3, 1871 (16 U. S. Stats., 573). This happened from the fact that the Branch Line Grant of 1871 overlapped to a very small extent the Southern Pacific *Main Line* Grant of 1866 and the same lands by chance fell within the limits of both the Branch Line Grant of 1871 and the Main Line Grant of 1866.

A bill was filed in the United States Circuit Court for the Southern District of California by the United States on April 11, 1904, to cancel

the patents for these lands and to cancel and annul all selections and applications to select lands described in the bill which had not as yet been patented to the railroad company. The case was tried, and the court held that the railroad company was entitled to a decree dismissing the bill as to all lands involved in the suit which were common to the place limits of the Atlantic and Pacific Grant and the indemnity limits of the Southern Pacific *Main Line* Grant which were not actually involved in the suit of *Southern Pacific Railroad Co. vs. United States* (168 U. S., 1); and that the United States was entitled to a decree in its favor as to the lands common to the place limits of the Atlantic and Pacific Grant and the indemnity limits of the Southern Pacific *Main Line* Grant which happened to overlap the Southern Pacific Branch Line Grant of 1871 and were therefore physically embraced within but in their character of Main Line grant lands not involved in the suit of *Southern Pacific Railroad Co. vs. United States* (168 U. S., 1).

From so much of the decree of the Circuit Court (Record, p. 86) as ordered the bill of complaint dismissed as to lands described in subdivision three and subdivision four of the decree

(Record, pp. 88 to 96), which were the lands in suit not included in the case of *Southern Pacific Railroad Co. vs. United States* (168 U. S., 1), the Government appealed to the United States Circuit Court of Appeals for the Ninth Circuit ; and the Railroad Company appealed from so much of the decree as ordered the cancellation of the Southern Pacific indemnity selections for the lands described in subdivision five of the decree (Record, p. 96), which were lands falling within the Southern Pacific Branch Line Grant of 1871 and therefore embraced within but in their character of Main Line grant lands not involved in the case of *Southern Pacific Railroad Company vs. United States* (168 U. S., 1).

The judgment of the Circuit Court was affirmed in the court below. The Government has appealed from the decree of the Circuit Court of Appeals to this Court and the Southern Pacific Railroad Company has taken a cross-appeal.

There are but two questions in the case, one presented by the Government's appeal, and the other raised on the appeal of the Railroad Company. They are as follows :

FIRST. Can the Railroad Company select its indemnity lands under its Main Line Grant from within the place limits of the forfeited

Atlantic and Pacific Grant? In other words, does the status of lands at the time of their selection determine the right of the Railroad Company to select? If at the time of actual selection the lands are public lands, cannot the Railroad Company take them under its indemnity grant notwithstanding that at some time prior to such selection they had been granted to another railroad company and forfeited by the United States for failure to build such other railroad? This question has been answered in the affirmative by both the lower courts and is now again presented by the Government's appeal.

SECOND. Does the decision in the case of *Southern Pacific Railroad Co. vs. United States* (168 U. S., 1) by reason of the overlapping of the two grants, bar the Railroad Company from selecting as indemnity under the Main Line Grant, lands which it is claimed to have been determined in that suit could not be patented to the Railroad Company under the Branch Line Grant of 1871? This is the question raised by the appeal of the Railroad Company.

**Specification of Error on the Appeal of the
Railroad Company, No. 129.**

The United States Circuit Court of Appeals for the Ninth Circuit erred,

I. In not reversing the judgment and decree of the court below and holding that the Southern Pacific Railroad Company was not barred by the decision in the case of *Southern Pacific Railroad vs. United States* (168 U. S., 1) from selecting under the provisions of its Main Line Grant of 1866 the lands which were involved in said case only in their character of lands granted to the Southern Pacific Railroad under the Branch Line Grant of 1871.

FIRST POINT.

Appeal of the Government.

It was held by both the lower courts that the status of lands at the time of selection is what determines the right of the railroad to select. If at the time of actual selection the lands are then public lands, the right of the railroad company to select them is clear under the long-

established doctrine of this Court in the case of *Ryan vs. Railroad Company* (99 U. S., 382).

The lands described in the decree below were originally included in the grant to the Atlantic and Pacific Railroad under the Act of 1866. Twenty years thereafter they were forfeited to the United States because of the failure of the Atlantic and Pacific to construct its road and then became part of the public domain, and no one yet has suggested how the facts in the present case can be distinguished from the facts in the *Ryan case*. It certainly can make no difference that the grant forfeited in the *Ryan case* was a Mexican grant while the grant declared forfeited in this case was a grant from the United States.

The point in the *Ryan case* was not in any way as to the character of the grant which was forfeited, but whether when forfeited the lands became public lands. If they did, then as the *Ryan case* squarely decided they were open to selection under a grant of indemnity lands to a railroad company.

We do not need to elaborate this proposition in this brief for the reason that the same question is raised in the case of *Southern Pacific Railroad Co. vs. United States*, No. 121 on the present docket, which has just been argued, and to avoid

repetition we respectfully refer the Court to pages 7 to 15, inclusive, of our brief in that case.

The question whether the doctrine of the *Ryan case* (that a railroad is entitled to select public land as indemnity no matter what its condition and character may have theretofore been) applies is found both in case No. 121 and in the case at bar. In case No. 121, however, the Government seeks to make an exception to the doctrine of the *Ryan case* upon the ground that the land in question, though earned by the railroad and though public land when selected, was claimed under the Branch Line Indemnity Grant of 1871, and that the railroad was, therefore, barred from claiming it under the decision in 168 U. S., 1, although the land was not directly and physically included in that suit. The Railroad Company's answer was that the question in No. 121 was not barred by 168 U. S., 1, as it could not have been there presented for the reason that the only lands involved in that suit were *place* lands under the Branch Line Grant. In the case at bar the Government seeks to again make an exception to the doctrine of the *Ryan case* upon the theory that the railroad was barred from making the selection under 168 U. S., 1. The Railroad Company's answer is that

the selection was made under its Main Line *Indemnity* Grant of 1866, while the only grant discussed in 168 U. S., 1, was the Branch Line *Place* Grant of 1871.

SECOND POINT.

The filing of a suit by the Government to quiet the title to lands in so far as any claim is made thereto by the Railroad Company under the Branch Line Grant of 1871 does not bar the selection of such lands by the Railroad Company under the Grant of 1866, simply because the indemnity limits of the two grants overlapped to a slight extent and, unknown to either side at the time of the trial, land physically within the indemnity limits of the grant of 1866 was in its character of indemnity land under the grant of 1871 included in such suit.

It is true that the lands described in subdivision V of the decree below happened to fall within the limits both of the Branch Line Grant of 1871 and the Main Line Grant of 1866. It is true that such lands were involved as Branch

Line Grant lands in the suit of *Southern Pacific Railroad vs. United States* (168 U. S., 1); but only in their character of and in so far as they were lands granted under the Act of 1871. Nobody even knew of the conflict between the indemnity limits of these two grants of 1871 and 1866 until the case had been tried and an appeal taken. The suit was brought by the United States to quiet the claims of the railroad company under the Act of 1871. The United States did not know that the lands with reference to which it had brought suit were within the grant to the Southern Pacific Railroad under the Main Line Grant of 1866. The Southern Pacific Railroad did not know this. No issue was tried or considered or determined in 168 U. S., 1, as to the right of the Railroad Company to select these lands under the Main Line Grant of 1866.

An examination of the bill of complaint in 168 U. S., 1, will show that the suit was brought to quiet the title of the United States as to the claims of the railroad and its grantees under and by reason of the Branch Line Grant of 1871. There is no reference of any kind in the bill of complaint to the Main Line Grant of 1866 and the only reference therein to the Act

of 1866 is as embodying the terms and conditions upon which the Branch Line Grant of 1871 was made. The answers of the Railroad Company and of its grantees admit that this was the sole cause of action asserted in the bill. In the answer filed by the Railroad Company it is said :

“ The said respondents admit that they claim ownership in themselves and their grantees of the lands described in the bill of complaint, and they admit that they claim the same and aver that they acquired and became entitled to said lands under and by virtue of the said act of Congress of March 3, A. D. 1871, and the grant to the Southern Pacific Railroad Company therein contained ” (Vol. 1, p. 103, Transcript of Record, in 168 U. S., 1).

Upon appeal to the United States Circuit Court of Appeals, the Railroad Company called attention to the fact that some of the lands were also within the overlapping limits of the Main Line Grant. The United States, through its attorney and counsel, declined in any way to consider this question, and it was said, at page 72 of the oral argument of the government filed

for the use of and submitted to the Circuit Court of Appeals, as follows:

“ There are neither pleadings nor proofs in this case in reference to any Main Line Grant, and I cannot discuss that question, and if that question ever arises there will be pleadings and proofs upon it, and it will be argued fully and carefully.”

“ The answer alleges that the Railroad Company claims these lands under the Act of 1871. The allegation is that they were granted under the Act of 1871.”

In the brief for the United States in said Court, it is stated at page 37 :

“ This grant to the Southern Pacific Railroad, by Section 18 of this act [the Atlantic and Pacific Act] called the Main Line Grant, is not in any way directly involved in these suits.”

The position of the Government in its brief and on the oral argument in the Circuit Court of Appeals seems to have been approved by this Court, for it was said in 168 U. S., 1, at page 29, as follows :

“ The Southern Pacific Railroad Company constructed the road thus contemplated and

claims that the lands here in dispute passed to it under the above Act of 1871."

Again this Court in *Southern Pacific Railroad Co. vs. United States* (183 U. S., 519), in stating what was decided by the Court in 146 U. S., 570, 146 U. S., 615, and 168 U. S., 1, said at page 532 as follows :

" Obviously the fact settled by the decisions in those cases was the filing by the Atlantic and Pacific of an approved map of definite location. Upon that the controversy hinged. Such a map having been filed the title of the Atlantic and Pacific vested as of the date of the Act of July 27, 1866, and *inasmuch as the Southern Pacific claimed only by a grant of date March 3, 1871, it took no title.* * * *

" But it was not adjudged in those cases either that the Southern Pacific had no title to any real estate by virtue of the Act of 1866, or that if there was any real estate to which it had any claim or right by virtue of that act such claim was not of equal force with that of the Atlantic and Pacific."

We have therefore this curious situation : The Government by its Attorney General has insisted that no issue was presented in 168

U. S., 1, involving the grant to the Southern Pacific Railroad under the Main Line Grant of 1866. We have this Court so holding, not only in 168 U. S., 1, but in the subsequent case in 183 U. S., 519. Notwithstanding all this, the Attorney General now claims that in spite of the position which he took in 168 U. S., 1, the Railroad Company is barred by that case from asserting any claim under the Main Line Grant of 1866 to any land which happened to be physically embraced within the suit in 168 U. S., 1, but only in its character and capacity of Branch Line Grant land under the Act of 1871.

It is important to note that the case in 168 U. S., 1, was decided in the Circuit Court of Appeals on June 24, 1895 (69 Fed. Rep., 47), and that therefore at the time the overlap of the Main Line Grant of 1866 was called to the attention of the Attorney General and the Government took the definite stand that there was no issue raised in 168 U. S., 1, involving the land grant to the Southern Pacific Railroad under the Main Line Grant of 1866, there was then a suit pending brought by the United States to quiet its title to lands claimed by the Southern Pacific Railroad under the Main Line Grant of 1866,

and the bill in that case was filed by the Government in the United States Circuit Court for the Southern District of California on May 14, 1894 (183 U. S., 519). This explains the clear and definite stand taken by the Government that no issue was raised in 168 U. S., 1, relating to the land grant to the Southern Pacific Railroad under the Main Line Grant of 1866. The Government then had a suit pending raising that issue and had no desire or intention to permit the issue raised in 168 U. S., 1, to be clouded in any way by questions arising under the Main Line Grant of 1866.

The Government therefore recognized that the claims to the lands of the Atlantic and Pacific Grant forfeited by the Act of 1886 under the two Southern Pacific grants of 1866, and 1871, were entirely separate and distinct, and the Government, by its attorney, made it clear that by having these two suits (168 U. S., 1; and 183 U. S., 519) running side by side, one seeking to quiet the claims of the Southern Pacific Railroad under the Act of 1871, and the other seeking to quiet the claims of the Southern Pacific Railroad under the Grant of 1866, and out of abundant caution under any other Act of Congress, it was not open to the railroad company to raise in

either case any claims arising under any grant not involved in such case.

The law of railroad land grants is a separate and independent branch of jurisprudence created by the decisions of this Court, and when a bill is filed by the Government to quiet its title to land with reference to one railroad grant, it is not permissible to raise in such suit any claim of title under some other railroad grant. The bill was filed by the Government in 168 U. S., 1, not to quiet its title in the general sense in which that expression is used in ordinary litigation, but to quiet its title with reference to the claims of the Southern Pacific under the particular grant referred to of 1871, and we know of no clearer illustration of this principle than the fact that the Government of the United States had these two land suits proceeding at the same time side by side, one seeking to quiet the title of the United States with reference to claims of the Southern Pacific Railroad under the Branch Line Grant of 1871, and the other seeking to quiet its title to claims of the Southern Pacific Railroad under the Main Line Grant of 1866, or any other act of Congress. The two grants were regarded by the Government as distinct as if they had been made to two different railroad

companies. As a matter of fact they were as distinct as if they had been granted to two separate railroad companies. They were granted as an inducement to build two separate lines of railroad and the fact that one railroad company owned the two separate lines of railroad has nothing to do with the principle to which we now call attention.

We therefore assert with confidence that under railroad land grant law in a suit brought by the Government to quiet its title to lands as to claims made by a railroad under a particular grant it is not open to the railroad to claim the lands under some other grant and that therefore it was not possible in the litigation decided in 168 U. S., 1 (as was claimed by the Attorney-General) to raise the question of the right of the Southern Pacific Railroad to any of the lands involved under and by reason of its Main Line Grant of 1866.

Whether the Southern Pacific Railroad had acquired any lands under its Main Line Grant of 1866 by reason of the conflict of that grant with the contemporaneous Atlantic and Pacific Grant had not been determined in 1897, the date of the decision in 168 U. S., 1, and it was not until the year 1902, that it was finally held by

this Court in 183 U. S., 519, that the United States and the Southern Pacific Railroad were entitled to an equal moiety in all lands which were in conflict within the primary limits of the contemporaneous grants to the Atlantic and Pacific and the Southern Pacific companies under the Act of 1866. By this decision it was for the first time in effect established that the Southern Pacific Railroad had the right to select indemnity lands under this grant of 1866 in lieu of losses within its place limits, and, as has been decided more than once by this Court, a Railroad Company acquires no title to indemnity lands until such lands are selected by the Railroad Company. As therefore it was not determined until 1902 that the Railroad Company had the right to one-half the place lands under the Main Line Grant of 1866 which were in conflict with the place land grant to the Atlantic and Pacific Railroad, and as such case necessarily determines for the first time the right of the railroad to select indemnity lands to make good its losses within the place limits of its Main Line Grant of 1866, and as such selection and the acquisition of any title to such lands was not until 1903 many years after the decision in 168 U. S., 1, it is difficult to see how this case of *Southern Pacific*

Railroad vs. United States (168 U. S., 1) decided in 1897 could be a bar to such selection, for assuredly it was not possible to plead a title which was not and could not be acquired until after 1902 (date of decision in 183 U. S., 519), in a suit brought in 1891 and finally decided in 1897 (date of decision in 168 U. S., 1).

Of course in the suit in 168 U. S., 1, the railroad could not have made any claim to the lands there involved under the Main Line Indemnity Grant of 1866 (even if it had known of the overlap) for the reason that its losses within the place limits of the Main Line Grant of 1866, which was in conflict with the Grant under the same act to the Atlantic and Pacific, were not then known. This question was being determined in the suit then pending brought by the United States to quiet its title as against the claims of the Southern Pacific Railroad under the Act of 1866 or any other Act of Congress (183 U. S., 519). Therefore the Railroad Company (even if it had known in 168 U. S., 1, of the overlap), could not possibly have told that it had or would ever have any claim of any kind under the Grant of 1866 to the overlap land involved in 168 U. S., 1. Further than that the Railroad could not have told at the time 168 U. S., 1, was tried that it

would ever need the land as indemnity. For all that the Railroad then knew it might turn out that if its right to place lands under the Main Line Grant of 1866, was ultimately to be determined in its favor there might be no losses therein which would require it to draw upon its indemnity lands or it might prefer to make good any place limit losses, if any there were, from other indemnity lands than those involved in 168 U. S., 1. This is why title to indemnity lands is not acquired until selection.

The doctrine that the title to indemnity lands remains in the United States until selection and approval has been recognized by this Court in an unbroken line of decisions.

In the case of *New Orleans Pacific Railway vs. Parker* (143 U. S., 42), it was said by Mr. Justice BREWER at page 57 that :

“ As to lands within the indemnity limits, it has always been held that no title is acquired until the specific parcels have been selected by the grantee and approved by the Secretary of the Interior.”

In *United States vs. Missouri etc., Railway* (141 U. S., 358), Mr. Justice HARLAN again stated the rule as follows, at page 374 :

“As to lands which may legally be taken for purposes of indemnity, the principle is firmly established that title to them does not vest in the railroad company for the benefit of which they are contingently granted, but, in the fullest legal sense, remains in the United States *until they are actually selected* and set apart under the direction of the Secretary of the Interior specifically for indemnity purposes.”

In *Wisconsin Railroad vs. Price County* (133 U. S., 496, 512), Mr. Justice FIELD, who delivered the opinion of the Court said :

“Until the selections were approved there were no selections in fact, only preliminary proceedings taken for that purpose; and the indemnity lands remained unaffected in their title. Until then the lands which might be taken as indemnity were incapable of identification; the proposed selections remained the property of the United States. The Government, was, indeed, under a promise to give the company indemnity lands in lieu of what might be lost by the causes mentioned. But such promise passed no title, and, until it was executed, created no legal interest which could be enforced in the courts. *The doctrine that until selec-*

tion made no title vests in any indemnity lands has been recognized in several decisions of this Court."

In *Barney vs. Winona etc. Railroad* (117 U. S., 228), Mr. Justice FIELD, at page 232, said :

"In the construction of land grant acts in aid of railroads there is a well-established distinction observed between 'granted lands' and 'indemnity lands.' The former are those falling within the limits specially designated, and the title to which attaches when the lands are located by an approved and accepted survey of the line of the road filed in the Land Department, as of the date of the Act of Congress. The latter are those lands selected in lieu of parcels lost by previous disposition or reservation for other purposes, *and the title to which accrues only from the time of their selection.*"

In *Clark vs. Herington* (186 U. S., 206), Mr. Justice BREWER said at page 209 :

"It is familiar law that no title to indemnity lands is vested until an approved selection has been made."

Keeping in mind the settled law of this Court as established by the foregoing decisions that

title to indemnity lands under a railroad grant cannot be acquired until selection and approval; that the Southern Pacific's right to select indemnity lands for losses in place limits by reason of conflict between its Main Line Grant of 1866 and the grant under the same act to the Atlantic and Pacific was not settled until 1902 in 183 U. S., 519; and that the lands in controversy in this suit were not selected until 1903, it would seem difficult to seriously contend that the decision in 1897 (168 U. S., 1) as to the place lands under the Branch Line Grant of 1871 was a bar to such selection, simply because of the fact (unknown at the trial) that lands supposed to be only within the limits of the Branch Line Grant of 1871 also fell physically within the limits of the Main Line Grant of 1866.

In the brief filed by the Railroad Company in *Southern Pacific Railroad vs. United States*, No. 121 on this docket, which has just been argued, we have discussed at pages 15 to 33, the question as to whether the case in 168 U. S., 1, was a bar to the railroad company's right to select indemnity lands under its grant of 1871 from within the limits of the Atlantic and Pacific Grant. While the question in No. 121 is by no means the same as the question raised here, yet we believe the

discussion there will be of interest in this case as showing how impossible it is for the case in 168 U. S., 1, which related absolutely and entirely to the claims of the Southern Pacific Railroad under the *place* limits of the Branch Line Grant of 1871 to be a bar in this case involving the rights of the Southern Pacific Railroad to *indemnity* lands under the Main Line Grant of 1866.

The mere fact that the indemnity limits under the Grant of 1866 happened to conflict with the indemnity limits under the Grant of 1871 cannot possibly be a valid ground for preventing the Southern Pacific Railroad from now selecting the land under its Grant of 1866. Of course we cannot and do not dispute that by chance the lands in question were in conflict with the lands involved in the suit in 168 U. S., 1. It is just as true, however, that in a legal sense such lands were not involved in the suit in 168 U. S., 1, in their character as lands granted to the Southern Pacific Railroad under the Act of 1866.

It was unknown to the Government; it was unknown to the Railroad Company at the time of the trial of the case in 168 U. S., 1,—that there was a conflict between the indemnity limits of the two Southern Pacific grants. It was un-

known to the Government and unknown to the Railroad Company at the time of the trial of 168 U. S., 1, that any of the lands involved therein were within the indemnity limits of the Southern Pacific Grant of 1866. If it had been known it would have made no difference because the Government in its bill was seeking to quiet the title of the United States to the lands in question as against the claims of the Southern Pacific Railroad arising under the Act of 1871, and if at the trial any attempt had been made by the Southern Pacific to claim the land under the Grant of 1866, it would have been disregarded by the Government just as it was by the Attorney General when on appeal the fact of the overlap was called to his attention.

Both courts below have decided this case in reference to the lands involved in this point, which happened to have been physically embraced within the suit in 168 U. S., 1, upon the general principles of law applicable in ordinary suits to quiet title where the defendant is obliged to assert any title which he may then have to the land in question.

The whole question in this case is whether such general principles of law are applicable to

the facts in the case at bar, and we insist that they are not for two reasons.

FIRST: Because at the time the suit, in 168 U. S., 1, was brought and until it was finally disposed of in this Court, there was no claim of title in the Southern Pacific to the lands involved here under the Main Line Grant of 1866, and no claim of title thereto was obtained until 1903. Therefore even if the principles applicable to ordinary litigations to quiet title are in force in a case brought by the Government to quiet its title to lands with reference to claims made thereto under a particular act of Congress, such application cannot be made in this case for the reason that under the ordinary principles of law in regard to quieting title to property the defendant is not barred from asserting in a subsequent suit a title which he has acquired after the original suit has been tried.

There would seem to be no need to refer to authorities in support of this doctrine and we simply call attention to the case of *Barrows vs. Kindred* (4 Wall., 399), where it was said at page 404 as follows :

“ Barrows had no title to the premises in controversy, and judgment was given

against him. This may be admitted to be conclusive as to his want of title at that time and, whether the decision of the court as to the power of attorney and the deed made under it was erroneous or not, it would have been a bar to another action attempted to be maintained upon the same state of facts. But this did not deprive Barrows of the right to acquire a new and distinct title ; and, having done so, he had the same right to assert it, without prejudice from the former suit, which would have accompanied the title into the hands of a stranger."

SECOND. For the reason that in a suit brought by the Government to quiet its title to lands claimed by the defendants under a particular grant of Congress it is not open to such defendants to assert any claim to the land under another grant, especially when a contemporary suit is brought to quiet its title to the same lands with regard to any claims under such other grant. The Government, therefore, by reason of the position taken by it in 168 U. S., 1, with reference to the Main Line Grant of 1866 and because of the fact that it had brought a suit to quiet title to these very same lands with regard to claims thereto of the Railroad Company under the Main Line Grant of 1866, is cer-

tainly now estopped and barred from making the claim that the case in 168 U. S., 1, is a sufficient ground for holding that the railroad company cannot claim these lands under its indemnity grant under the Main Line Grant of 1866.

THIRD POINT.

The decree in favor of the Government as to the lands involved in subdivision five thereof should be reversed.

MAXWELL EVARTS,
Of Counsel for Southern Pacific
Railroad Company.

the same act and forfeited under the act of July 6, 1886, c. 637, 24 Stat. 123. *Southern Pacific Railroad Company v. United States*, 168 U. S. 1, distinguished.

Where selections are made after a decision of this court, the selections will not be declared illegal at the instance of the Government if its claim is inconsistent with the position taken by it in the earlier case.

THE facts, which involve rights of the Southern Pacific Railroad Company under its Main Line Grant to lands within the overlap of the primary limits of the Atlantic and Pacific Railroad Company land grant, are stated in the opinion.

The Solicitor General for the United States:

As to No. 128, the Southern Pacific is not entitled to select, as being within the indemnity provisions of its Main Line Grant made by the act of July 27, 1866, any lands which were subject to the primary provisions of the Atlantic and Pacific grant (made by the same act).

This question is really *res judicata*. See 168 U. S. 1, 61.

Other cases clearly sustain the principle underlying this decision. *Bardon v. Northern Pacific R. R. Co.*, 145 U. S. 535, 545; *Sioux City & St. P. R. R. Co. v. United States*, 159 U. S. 349, 364; *Chicago &c. Ry. Co. v. United States*, 159 U. S. 372, 374; *St. Paul Railroad Co. v. Winona Railroad Co.*, 112 U. S. 720, 732; *Clark v. Herington*, 186 U. S. 206.

Selections for the lands in Exhibit B to the bill are now pending in the Interior Department, but the Land Department has no power, jurisdiction, or discretion which it can exercise in approving them, and therefore this suit to quiet title and remove the cloud will lie. *Mullan v. United States*, 118 U. S. 271, 278; *Burfenning v. Chicago &c. Ry.*, 163 U. S. 321, 323; *Doolan v. Carr*, 125 U. S. 618, 624; *Weeks v. Bridgman*, 159 U. S. 541, 547.

The Government is entitled to a decree for the price

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(at the rate of \$1.25 per acre) of such of the patented lands as have been sold to *bona fide* purchasers. *Southern Pacific Railroad Co. v. United States*, 200 U. S. 341; *Oregon Railroad Co. v. United States*, 189 U. S. 103, 115.

It appears by stipulation that within the indemnity limits there still remains a large body of lands from which the company can select in lieu of those here involved. *Southern Pacific v. United States* (No. 1), 200 U. S. 341, 353.

As to No. 129, the former case is a conclusive adjudication against the defendants as to lands there and here involved. *Southern Pacific v. United States*, 183 U. S. 519; *United States v. Southern Pacific*, 184 U. S. 49.

The title to such of the lands in Exhibit B of the bill as were included in the former case is *res judicata*. It is immaterial that the right now asserted was not asserted then. The bill was to quiet title and the right now relied on should have been put forward at the time, as it could have been. The object of the rule is to end litigation. See *United States v. California &c. Land Company*, 192 U. S. 355; *Bienville Water Supply Co. v. Mobile*, 186 U. S. 212, 216; *Dowell v. Applegate*, 152 U. S. 327, 341.

The defendant company cannot contend that this effect of the decision is avoided for the reason that by the subsequent selection under the act of 1866, which was not in question in the case, it acquired a new title. Selection may be necessary to perfect title, but the right, of course, always comes from the granting act. That right could have been urged then as well as now.

Mr. Maxwell Evarts for appellees in No. 128 and appellants in No. 129:

The filing of a suit by the Government to quiet the title to lands in so far as any claim is made thereto by the railroad company under the branch line grant of 1871, does not bar the selection of such lands by the railroad

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company under the grant of 1866, simply because the indemnity limits of the two grants overlapped to a slight extent, and, unknown to either side at the time of the trial, land physically within the indemnity limits of the grant of 1866 was in its character of indemnity land under the grant of 1871 included in such suit. See *Southern Pacific Railroad Co. v. United States*, 183 U. S. 519, 532, stating what was decided by the court in 146 U. S. 570, 146 U. S. 615, and 168 U. S. 1.

The doctrine that the title to indemnity lands remains in the United States until selection and approval has always been recognized by this court. *New Orleans Pacific Railway v. Parker*, 143 U. S. 42, 57; *United States v. Missouri &c. Ry.*, 141 U. S. 358, 374; *Wisconsin Railroad v. Price County*, 133 U. S. 496, 512; *Barney v. Winona &c. R. R.*, 117 U. S. 228, 232; *Clark v. Herington*, 186 U. S. 206, 209.

The whole question in this case is whether such general principles of law are applicable to the facts in the case at bar. They are not for two reasons.

First: Because at the time the suit, in 168 U. S. 1, was brought and until it was finally disposed of in this court, there was no claim of title in the Southern Pacific to the lands involved here under the Main Line Grant of 1866, and no claim of title thereto was obtained until 1903. *Barrow v. Kindred*, 4 Wall. 399, 404.

Second: For the reason that in a suit brought by the Government to quiet its title to lands claimed by the defendants under a particular grant of Congress it is not open to such defendants to assert any claim to the land under another grant, especially when a contemporary suit is brought to quiet its title to the same lands with regard to any claims under such other grant. The Government, therefore, by reason of the position taken by it in 168 U. S. 1, with reference to the Main Line Grant of 1866 and because of the fact that it had brought a suit to quiet

title to these very same lands with regard to claims thereto of the railroad company under the Main Line Grant of 1866, is certainly now estopped and barred from making the claim that the case in 168 U. S. 1, is a sufficient ground for holding that the railroad company cannot claim these lands under its indemnity grant under the Main Line Grant of 1866.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill brought by the United States to quiet title and cancel patents, and for an accounting, as to lands lying within the indemnity limits of the grant made to the Southern Pacific Railroad Company by the act of July 27, 1866, c. 278, § 18, 14 Stat. 292, known as the Main Line Grant, and within the primary limits of the grant made to the Atlantic and Pacific Railroad Company by § 3 of the same act. The Atlantic and Pacific road forfeited its grant, (act of July 6, 1886, c. 637, 24 Stat. 123), and thereafter the Southern Pacific selected the parcels in question as indemnity under its Main Line Grant. The rights of the Southern Pacific under this grant were not subordinated to those of the Atlantic and Pacific under the same statute, as they were by its branch line grant of 1871, considered in our last decision, but in case of conflict each road took half within the conflicting place limits. *Southern Pacific Railroad Co. v. United States*, 183 U. S. 519. The special grounds for the decision between the same parties in 168 U. S. 1, followed in the case preceding this, do not exist here. Therefore the Circuit Court and the Circuit Court of Appeals held that the state of the lands at the time of selection determined the right, with an accidental exception that we shall explain. 152 Fed. Rep. 303. 167 Fed. Rep. 510. 93 C. C. A. 146. Both parties appeal; the United States from the

decision on the main point, the Southern Pacific from what concerns the excepted lands.

The Government argues that as the lands selected lay within the primary limits of the Atlantic and Pacific they cannot have been contemplated as possibly falling into the indemnity lands of the other road. It refers to an intimation in *Southern Pacific Railroad Company v. United States*, 189 U. S. 447, 452, made with regard to the branch line grant and to lands within the place limits of the Southern Pacific but for the paramount right of the Texas Pacific, that as the indemnity grant was 'not including the reserved numbers' 'it might be argued' that those words excluded the secondary claim to the same lands by way of indemnity after a forfeiture of the Texas Pacific grant. It suggests that *Ryan v. Railroad Company*, 99 U. S. 382, relied on for the ground of decision below, concerned land which the United States was claiming at the time of the indemnity grant and which it ultimately acquired, and that its authority should be limited to such a case. But we are of opinion that these arguments ought not to prevail.

An indemnity grant, like the residuary clause in a will, contemplates the uncertain and looks to the future. What a railroad is to be indemnified for may be fixed as of the moment of the grant, but what it may elect when its right to indemnity is determined depends on the state of the lands selected at the moment of choice. Of course the railroad is limited in choosing by the terms of the indemnity grant, but the so-called grant is rather to be described as a power. Ordinarily no color of title is gained until the power is exercised. When it is exercised in satisfaction of a meritorious claim which the Government created upon valuable consideration and which it must be taken to have intended to satisfy (so far as it may be satisfied within the territorial limits laid down), it seems to us that lands within those limits should not be excluded simply

because in a different event they would have been subject to a paramount claim. It seems to us, in short, that *Ryan v. Railroad Company*, *supra*, should be taken to establish a general principle and should not be limited to its special facts. As to the suggestion in 189 U. S. 447, 452, the words 'not including the reserved numbers' refer primarily at least to the numbers reserved from any part of the grant by the terms of the act, and the suggestion was made only as to a claim of indemnity from lands in and adjoining a strip to which the title under the primary grant failed. Whether there was anything in it in any aspect we need not consider now. It certainly cannot affect this case.

A more delicate question is presented by the appeal of the Southern Pacific. It is this: A part of the lands in controversy were not only within the main line indemnity limits of the Southern Pacific and the primary limits of the Atlantic and Pacific, but also within the indemnity limits of the Southern Pacific branch line grant. It is agreed that they were embraced in the decree against the right of the Southern Pacific under its branch line grant in 168 U. S. 1, and the argument is that the matter is *res judicata*, on the ground that a decree or judgment is binding as to all *media concludendi*, and that the former decree established the right of the United States to this land. *Dowell v. Applegate*, 152 U. S. 327; *United States v. California and Oregon Land Co.*, 192 U. S. 355, 358. But the selections in this case were made after the decree in 168 U. S. 1, and if the matter were at large it would seem a strong thing to hold an adjudication conclusive not only as to existing titles under the grant in controversy, but as to merely possible sources of title in the future under a different and distinct grant. We shall not discuss that question, however, or consider just how far the decisions have gone. The Solicitor General candidly agreed that the Government should not and would not rely upon this

ground, if it had taken a position inconsistent with it in the earlier case, and it seems to us plain that it did so and expressly deprecated any reference in that case to the rights under the Main Line Grant.

It appears that the bill in 168 U. S. 1, was brought or at least tried as a bill to quiet title against claims of the Southern Pacific under the branch line grant, and that during the litigation on that question there was pending another bill to quiet title under the Main Line Grant, being the one before this court in 183 U. S. 519. It is said, and we do not understand it to be disputed, that in oral argument and printed brief before the Circuit Court of Appeals the counsel for the Government repeated that title under the Main Line Grant was not involved, and that if that question ever arose there would be pleadings and proof upon it. The court in its decision, 168 U. S. 1, 29, stated the claim of the Southern Pacific to be under the act of 1871 (the branch line grant). Again, in the case between the same parties in 183 U. S. 519, 533, the court said that it was not adjudged in the former cases that the Southern Pacific had no title to any real estate by virtue of the act of 1866; and although it also said that of course the decrees were conclusive as to the title to the property involved in them, still in view of the conduct and disposition of the cause as to the branch line grant, if for no other reason, we think that it would be inequitable for the United States now to rely upon the decree in that cause as conclusive upon the parties in this. It follows that as the present decision was in favor of the United States with regard to the last-mentioned lands it must be reversed, (No. 129), and that otherwise (No. 128) it stands affirmed.

Decree reversed.

UNITED STATES *v.* SOUTHERN PACIFIC
RAILROAD COMPANY.

SOUTHERN PACIFIC RAILROAD COMPANY *v.*
UNITED STATES.

APPEALS FROM THE CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT.

Nos. 128, 129. Argued January 26, 1912.—Decided February 26, 1912.

An indemnity grant, like the residuary clause in a will, contemplates the uncertain and looks to the future, and what the party entitled may elect to select depends upon the state of the lands at the time of selection. *Ryan v. Railroad Company*, 99 U. S. 382.

Under the main line grant made to the Southern Pacific Railroad Company by the act of July 27, 1866, c. 278, § 18, 14 Stat. 292, the company can select lieu lands within the primary limits of the grant made to the Atlantic & Pacific Railroad Company by § 3 of